Supreme Court E-Library



*Ruiz Castro, Teehankee, Antonio, Esguerra, Fernandez, Muñoz Palma,* and *Aquino, JJ.*, concur.
*Zaldivar* and *Fernando, JJ.*, took no part.
*Barredo, J.*, did not take part.
*Makasiar, J.*, is on official leave.

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**FIRST DIVISION**

[G.R. No. L-27849. April 30, 1974]

**MACKENZIE PIO,** *petitioner, vs.* **HON. PIO R. MARCOS,** Judge, Court of First Instance, Baguio City; **CLERK OF COURT,** Court of First Instance, Baguio City and **PHILEX MINING CORPORATION,** *respondents,* **GEORGE T. SCHOLEY; TRINIDAD NEVADA, BALDOMERO NEVADA, JR.** and **HEIRS OF BALDOMERO NEVADA, SR.; NATIONAL MINES AND ALLIED WORKERS UNION;** and **HEIRS OF BONIFACIO MONTILLA,** *intervenors.*

[G.R. No. L-34432. April 30, 1974]

**TRINIDAD NEVADA, BALDOMERO NEVADA, JR.,** and **HEIRS OF BALDOMERO NEVADA, SR.,** *intervenors, vs.* **COURT OF FIRST INSTANCE OF BAGUIO CITY,** *respondent.*

**SYLLABUS**

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; MANDAMUS CANNOT CONTROL THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION.**— Petitioner seeks a writ of mandamus from this Court to compel respondent court to issue a writ of preliminary injunction enjoining respondent Philex from continuing with its mining operations over certain mining claims which petitioner claims to have inherited from his alleged

Supreme Court E-Library



father but which are duly leased by the Republic of the Philippines to the Nevadas who in turn granted Philex the operating contracts thereof on a royalty basis — on the claim that it is the respondent court's *ministerial,* not discretionary, duty to issue such preliminary injunction after its order directing the issuance of such an injunction and after petitioner had filed the injunction bond fixed by it in the sum of P50,000.00. The injunction must fail because under the circumstances of record, the issuance of the injunction sought is manifestly *not* a ministerial duty, *viz* a duty which is so clear and specific as to leave no room for the exercise of discretion in its performance and its discharge requires neither the exercise of official discretion nor judgment. The issuance of a writ of preliminary injunction involves the exercise of judgment and discretion and mandamus will not lie to compel the performance of such discretionary function. It is an established principle that the writ of mandamus may not be issued to control the discretion of a judge or to compel him to decide a case or a motion pending before him in a particular way — the writ being available only to compel him to exercise his discretion or his jurisdiction. Corollarily, where there is no clear well-defined and certain right on the part of petitioner to the thing demanded and no corresponding clear and specific legal duty on the part of respondent court to perform the act demanded, mandamus will be denied.

2. **ID.; PROVISIONAL REMEDIES; WRIT OF PRELIMINARY INJUNCTION; DOCTRINE IN THE GRANTING OF INJUNCTION; COMPLAINANT'S RIGHT OR TITLE MUST BE CLEAR AND UNQUESTIONED.**— When petitioner's title to the mining claims is not at all clear, well-defined and certain as to entitle him to mandamus, the denial of the writ on this ground is proper. It is a cardinal rule that injunction, as a rule, will not be granted to take property out of the possession or control of one party and place it into that of another whose title has not clearly been established by law.

3. **PUBLIC LAW; REPUBLIC ACT 4388; MINING LAWS; DIRECTOR OF MINES HAS EXCLUSIVE JURISDICTION OVER MINERAL CLAIMS AND SURFACE RIGHTS.**— Petitioner's complaint alleged two causes of action. In one cause of action petitioner disputes the right of Philex to conduct mining operations on about forty-eight mining claims allegedly belonging to him by right of inheritance and seeks the payment of P70,000 monthly from Philex "for actually operating and

Supreme Court E-Library



mining the mineral claims belonging to plaintiff." Since *mining leases* have been duly awarded on the group of claims by the Republic of the Philippines thru the Secretary of Agriculture and Natural Resources to the Nevadas who in turn granted Philex operating rights thereon on a royalty basis, it is manifest that under the provisions of Republic Act 4388, such "conflicts and disputes arising out of mining locations" or adverse claims during the period of publication against applications for mining leases had to be submitted under *Sections 61 and 73 of the Mining Law* as amended by the cited Act to the Director of Mines (not to the court of first instance) for decision, subject to appeal to the Department Secretary, whose decision may be reviewed on appeal only by the Court of Appeals or the Supreme Court as the case may be, under the terms and in the manner prescribed by the Act. This cause of action is thus *beyond* the *jurisdiction* of respondent court and must be dismissed. The basis of dismissal of this cause of action which in effect upholds Philex' right to operate the mining claims for failure of petitioner to timely avail of the administrative recourse provided by the Mining Law to submit his conflicting or adverse claims to the Mines Director, is likewise applicable to the fourth intervenors, the Ilongot Cultural Minority, whose vague claim of ownership should likewise be dismissed.

4. **ID.; ID.; ID.; LOWER COURT'S DEPOSIT ORDER OF ROYALTIES PAID BY PHILEX TO NEVADAS WAS PROPER AND WITHIN ITS JURISDICTION.**— With the respondent court's jurisdiction over the cause of action of petitioner's complaint having been upheld, the Nevadas' primary ground of lack of jurisdiction for seeking nullification of the deposit orders has lost its basis. Prescinding therefrom, however, it cannot be gainsaid that the Montillas' cross-claim as second intervenors against the Nevadas as first intervenors alleging the existence of a *trust* relationship and *co-ownership* between them concerning the mining claims in question and that the Nevadas particularly the deceased Baldomero Nevada, Sr. whom they had designated as their attorney-in-fact to manage and administer the same committed a *breach of trust* when he caused to be registered in his own name and in the names of his wife and son the said mining claims *jointly belonging both* to the Montillas and the Nevadas in co-ownership and that they were therefore entitled to an accounting of the royalties received by the Nevadas from Philex and to receive two-thirds thereof their *rightful share* could

Supreme Court E-Library



properly stand as a valid and separate suit within the lawful jurisdiction of respondent court. Hence, respondent court duly acted within its jurisdiction and in the proper exercise of its discretion and judgment when after hearing the parties in open court and receiving their written arguments he issued the disputed deposit orders and required the movants to put up a substantial bond as the Montillas did file such bond in the required amount of P200,000.

5. **ID.; ID.; ID.; REQUIREMENT OF SUBSTANTIAL BOND AND ENTRUSTING THE ROYALTIES TO AN IMPARTIAL DEPOSITARY IS FAIR AND JUST REMEDY IN INSTANT CASE.**— Balancing in one question the serious conflicting claims and interest of the Montillas (and the Nicolases) and the Nevadas, respondent judge's solution of requiring a substantial bond filed by the Montillas and entrusting to an impartial depositary the fruits (royalties) of the properties in dispute pending determination of their dispute seems a fair and just remedy and cannot be stricken down as constituting a grave abuse of discretion and the Court's temporary restraining order will now have to be lifted.

6. **ID.; DEPOSIT OF ROYALTIES ALREADY RECEIVED BY NEVADAS FOR SEVEN YEARS IS NOT REQUIRED UPON FILING OF COUNTER-BOND.**— The royalties paid out by Philex to the Nevadas during the pendency of these proceedings were not so deposited by virtue of the Court's restraining order of March 21, 1968. These involve a sizable amount of royalties that accrued between the issuance of the respondent court's deposit orders of August 19, 1967 and December 20, 1967 to the present date or a period of almost seven years. To avoid the working of hardship and undue difficulty on the Nevadas, they shall not be required to deposit such royalties already received by them during the said period upon the filing of a counter-bond in favor of the Montillas (and the Nicolases) in such amount as may be deemed adequate and fixed by the trial court.

**APPEARANCES OF COUNSEL**

*Marvin R. Hill* for petitioner.

*F. Reyes & F. Cabato* for respondent Philex Mining Corporation.

*Tañada, Sanchez, Tañada & Tañada* for intervenor Heirs of Bonifacio Montilla.

Supreme Court E-Library



*B. Catbagan, Jr.* for intervenor National Mine and Allied Workers Union.

*Siguion Reyna, Montecillo, Belo & Ongsiako* for intervenor Trinidad Nevada, et al.

## DECISION

**TEEHANKEE, *J.*:**

The Court dismisses the petition in Case L-27849 for the issuance of a writ of mandamus to compel respondent judge to issue a writ of preliminary injunction enjoining respondent Philex Mining Corporation from continuing with its mining operations over certain mining claims operated by it under operating contracts on a royalty basis executed in its favor by the holders of mining leases duly granted by the Republic of the Philippines, as directed in an earlier order of March 15, 1966. Petitioner's claim that the issuance of such injunction is *ministerial* after he has filed the injunction bond fixed by respondent judge is untenable since said corporation had filed a motion for reconsideration of the injunction order which respondent judge has kept pending and under advisement and has not resolved up to now. The issuance of a writ of preliminary injunction involves the exercise of judgment and *discretion* on the part of respondent judge which may not be controlled by mandamus where there is no clear, well-defined and certain right on the part of petitioner and an equally clear and specific legal duty on the part of respondent judge to perform the act demanded.

On the jurisdictional question raised by intervenors Scholey and the Nevadas in the latter's counter-petition in Case L-34432, the Court holds that the doctrine of *Philex Mining Corp. vs. Zaldivia*[1] is controlling. Consequently, petitioner's second cause of action in his complaint below disputing the right of Philex to *operate and exploit the mining claims* in question *under mining leases* duly granted by the Government to the leaseholders who in turn granted operating rights to Philex on

[1] 43 SCRA 479 (1972).

Supreme Court E-Library



a royalty basis is beyond the jurisdiction of respondent court of first instance, since under Republic Act 4388 which became effective on June 19, 1965 prior to the filing of the complaint, exclusive original jurisdiction over "conflicts and disputes arising out of mining locations" is vested in the Director of Mines whose decision may be appealed to the Secretary of Agriculture and Natural Resources, whose decision in turn may be appealed only to the Court of Appeals or to the Supreme Court, as the case may be, within the statutory 30 day periods fixed, to the exclusion of courts of first instance. By the same token, since petitioner's first cause of action for recovery of possession of the premises (under claims of alleged ownership by right of inheritance) and for recovery of *reasonable rentals* for *surface rights* does not raise adverse claims over mining rights which fall within the original administrative authority of the Mines Director but asserts claims *judicial* in nature which can be resolved only by regular courts in the exercise of judicial power, such first cause of action properly falls within the jurisdiction of respondent court.

The deposit orders of August 19, 1967 and December 20, 1967 requiring Philex to deposit in the bank the royalties paid by it to the Nevadas upon a P200,000.00 bond filed by the Montillas was properly issued by respondent court within its jurisdiction insofar as the Montillas' cross-claim against the Nevadas alleging breach of trust and wrongful deprivation of the Montillas' co-ownership of the claims in question when the Nevadas allegedly wrongfully excluded the Montillas in relocating and registering the claims solely in their (Montillas') names (and allegedly likewise excluded the Nicolases, intervenors in the case below from two claims claimed by them as co-owners) and no abuse, much less grave abuse, of discretion having been shown, the said orders shall stand and the temporary restraining order issued by this Court on March 21, 1968 restraining its enforcement upon the Nevadas' motion is set aside and lifted.

The factual background of the case is as follows:

Mackenzie Pio, petitioner herein, claims he owns a parcel of land of about 400 hectares situated in Poquis, Municipality of Tuba, Mountain Province, which he allegedly inherited from his

Supreme Court E-Library



father, Artemio Pio, who died intestate in 1942. Allegedly within the perimeter of said parcel of land are 48 mining claims[2] located by his father in the years 1933 and 1934.

To recover eight (8) of these mining claims, namely: Sheland (Chilan), Sheland Fr. (Chilan Fr.), Minas, Sato, Oking, Ma, Padcal and Bayeñgan, and the surface rights thereof, petitioner lodged a complaint in the Court of First Instance of Baguio on April 23, 1965.[3] Named defendant was Philex Mining Corporation (Philex for short).

He there averred, *inter alia,* that Philex unlawfully occupied about ten (10) hectares of his aforestated land and introduced thereon, without his knowledge and consent, improvements like a mill plant, a crusher plant, filter plants, one hundred bunkhouses and twenty staff cottages. He further claimed that, over his objection, Philex has been extracting ores, mostly gold and copper, from his alleged mining claims; that unless stopped, the time would come when the said claims shall have been extracted of its ores and completely mined out by Philex thus causing irreparable damage to him.

He prayed that Philex be ordered to vacate the premises; pay plaintiff the amount of P10,000.00 as reasonable monthly rentals of the surface rights, P70,000.00 a month for actually operating and mining the mineral claims, P5,000.00 as attorneys' fees; and pay the cost.

Philex brushed aside petitioner's claim of ownership, and asserted that what it is actually operating and mining is the Nevada Group of twelve claims, and this by virtue of public instruments executed in its favor by the locators-owners, namely, intervenors Baldomero Nevada, Sr. (now deceased and represented by his heirs), Trinidad M. Nevada and Baldomero Nevada, Jr. (Nevadas for short) who hold the right to exploit the claims by

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[2] In petitioner's memorandum filed on January 26 1968, it was alleged there that there are 49 mining claims in the disputed area. *Rollo,* p. 383.

[3] Civil Case No. 1595, entitled "Mackenzie Pio, Plaintiff, *versus* Philex Mining Corporation, represented herein by its General Superintendent, Ralph J. Seideman or his authorized representative, Defendant."

Supreme Court E-Library



virtue of mining contracts of lease duly executed by the Republic of the Philippines in their favor and who gave it the operating rights on a royalty basis.

On August 25, 1965, petitioner followed up his complaint with a petition for a writ of preliminary injunction. He alleged therein, amongst others, that continued mining operations by Philex in the disputed properties pending the litigation would not only cause great and irreparable injury but would also work injustice to him. To preserve the rights of the parties during the pendency of the proceedings, he asked for a writ of preliminary injunction directing Philex and its authorized representatives to desist and refrain from further mining operations within the premises in question, and to desist from the construction of roads and buildings, and all other acts and deeds detrimental to the rights and interests of the petitioner.

On September 10, 1965, respondent judge deferred action on the petition for preliminary injunction until "after the defendant has presented some evidence."[4]

On March 15, 1966 however, even before defendant had opportunity to present its evidence, respondent judge issued an order, the dispositive part of which reads:

"WHEREFORE, let the corresponding Preliminary Injunction issue against the Defendant Corporation after the filing of a bond heretofore fixed by this Court in the amount of P50,000.00 by the Plaintiff to answer for whatever damages the Defendant Corporation may sustain as a result of the issuance of this writ. The City Sheriff or any of his deputies is directed to serve a copy of this Order upon the Defendant Corporation, Pacdal Main Office. Upon service of the same, the Defendant Corporation, General Superintendent, his Assistants, Foreman, Agents, Representatives, Attorneys, and/or Attorneys-in-fact, Servants, Laborers, and all persons acting or working under him, are hereby ORDERED to desist from the operation of its mill and crusher plants and all other machineries related thereto until a contrary order is issued by this Court."[5]

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[4] See Order of September 10, 1965, Rollo, p. 242.

[5] *Rollo*, p. 20.

Supreme Court E-Library



On April 16, 1966, Philex moved for reconsideration of the aforesaid order. The record shows that this motion has not been resolved.[6]

After the issuance of the March 15, 1966 order, several parties intervened in the case below.

First to intervene were the heirs of Baldomero Nevada, Sr. et al. (referred to herein as the Nevadas).[7] They claimed that their predecessors "have been in possession under claim of ownership, continuous, public, peaceful and adverse to everyone specifically to Artemio Pio and his heirs for over 10 years preceding the filing of the complaint and have thereby acquired ownership or leasehold rights over the mineral claims operated by defendant Philex" and that they hold these mining claims by virtue of mining lease contracts executed by the Republic of the Philippines in their favor.[8] Incidentally, it is the Nevadas who contracted Philex to operate their mining claims, in consideration for which Philex pays them the stipulated royalties. They charged that petitioner is not the son of Artemio Pio and branded his claim as "patently without basis and fictitious."

Second intervenors were the Heirs of Bonifacio Montilla (the Montillas for short).[9] Their case is anchored on an alleged 2/3 undivided interest with the Nevadas over the mining claims being operated by Philex. They alleged that on October 2, 1947, the late Bonifacio Montilla, Soledad O. Montilla and the late Baldomero Nevada, Sr. were the joint, sole, exclusive owners, share and share alike, of some 38 mining claims located in the barrios of Liang, Alang and Poquis of the Municipality of Itogon, Benguet, Mountain Province, including the following mineral

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[6] *Rollo,* p. 223.

[7] Baldomero Nevada, Sr. died on October 11, 1964 in Baguio City and on November 27, 1964, Trinidad M. Nevada and Baldomero Nevada, Jr. commenced Special Proceeding No. 540 entitled "In the Matter of the Intestate Estate of Baldomero Nevada, Sr." p. 801, *Rollo.* Answer in intervention in the CFI of Baguio dated April 25, 1966.

[8] See: Annexes 1 to 11 of the Nevada's Answer in Intervention filed with this Court, pp. 116-159, *Rollo.*

[9] Allowed to intervene on January 17, 1967; *Rollo,* p. 476.

Supreme Court E-Library



mining claims — one fractional and eleven full mineral lode claims:

| *Name of Claims* | *Locators* | *Dates of Location* |
|---|---|---|
| "In Love | Soledad O. de Montilla | March 29, 1935 |
| Item | Bonifacio Montilla | March 31, 1935 |
| No | Bonifacio Montilla | —do— |
| Icabod | Bonifacio Montilla | March 29, 1935 |
| Ben | Soledad O. Montilla | —do— |
| Ideal | Soledad O. Montilla | —do— |
| Ico | Soledad O. Montilla | —do— |
| Idea | Bonifacio Montilla | —do— |
| Virginia | Baldomero Nevada, Sr. | —do— |
| Pulu 39 Fr. | Carlos Orcajeda | —do— |
| Instant | Antonio B. Nicolas | March 28, 1935 |
| Do | Antonio B. Nicolas | March 29, 1935" |

They further averred that the Montilla spouses and Bartolome Nevada, Sr., as the exclusive owners of various mining claims including the specified mineral claims, together with the registered locators of other mining claims, all of which comprised the so-called Pulupandan group, executed and signed a special power of attorney appointing the late Bartolome Nevada, Sr. as their attorney-in-fact to transact, negotiate or contract for the development, exploitation and operation of the Pulupandan group of 64 full mineral lode claims with any individual, corporation or firm dedicated to operate mining properties; that on June 16-30, 1955, while the aforementioned mining claims were still valid and subsisting, the late Bartolome Nevada, Sr., without the knowledge and consent of the Montillas and in gross bad faith and in breach of trust and upon the inducement of a certain George Scholey of the defendant Philex Mining Corporation, caused the whole area covered by the mining claims just specified to be relocated and had the said mining claims registered under joint designations only in his name and in the names of the defendant Trinidad Nevada and Bartolome Nevada, Jr. and to their exclusion; that as relocated, the claims and respective locators are as follows:

Supreme Court E-Library



| *"Names of Claims* | *Names of Locators* |
|---|---|
| Edwin, Edna, Elmo and Edgardo | Baldomero Nevada, Sr. |
| Edmundo, Eming, Esther and Noel | Baldomero Nevada, Jr. |
| Francisco, Leo, Benigno and | Trinidad M. Nevada" |
| | Mariano |

They complained that on August 29, 1955, the late Bartolome Nevada, Sr., in his own behalf and as attorney-in-fact of Trinidad Nevada and Bartolome Nevada, Jr., without their knowledge signed an agreement with the defendant Philex Mining Corporation whereunder the latter was given the exclusive right or option to operate, develop and exploit the aforementioned relocated mining claims, the area of which is the same as the one covered by the mining claims heretofore enumerated which belong to Soledad O. Vda. de Montilla, the late Bonifacio Montilla and the late Bartolome Nevada, Sr. in co-ownership. By reason of this privity, they demand two thirds of the royalties due the Nevadas from Philex.

The National Mines and Allied Workers Union (Union for short) composed of laborers and employees of Philex Mining Corporation were the third to request leave to intervene. Should Philex be ordered to desist from its mining operations, the members-employees feared they would lose their jobs, hence, it moved to intervene.

Members of the Igorot Cultural Minority headed by Jose Mariño,[10] next intervened as fourth intervenor and averred that the disputed land belonged to them. They had tilled the land and grazed their flocks there for periods of such duration as allegedly entitled them to ownership.

The Heirs of Antonio B. Nicolas (Nicolases for short) were fifth to intervene and asserted also an interest of undivided co-ownership[11] over two of the twelve mining claims being operated by Philex, namely: Do Fr. and Instant which were allegedly re-

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[10] Allowed to intervene on January 17, 1967.

[11] Intervention dated February 25, 1967.

Supreme Court E-Library



staked and re-named Edna and Edgardo by the Nevadas.[12] By reason thereof, they aver that they are entitled to 1/6 of the royalties due the Nevadas.

One George T. Scholey (Scholey for short) was the sixth and last intervenor and he alleged that he was the assignee of twenty percent (20%) of the royalties due the Nevadas from Philex[13] He there moved for the dismissal of the case on the ground of lack of jurisdiction of the trial court. He was joined in this motion by the intervenors Nevadas, the Union, the Igorot Cultural Minority (first, third and fourth intervenors) and Philex. On July 24, 1967, the trial court denied the motion. A first motion for reconsideration failed of its purpose. A second motion for reconsideration is still pending resolution in the trial court.[14]

Continuing with the proceedings in the trial court, we find that the trial on the merits went on. And as of October 26, 1966, petitioner had rested his case.

But a month before that, or specifically on September 28, 1966, petitioner filed a motion to require Philex to deposit the money being paid by Philex to the Nevadas in any banking institution pending the termination of the case. Petitioner later amended his petition upon receiving information that there was already deposited by Philex with the People's Bank and Trust Company, Baguio Branch, an amount of about P350,000.00 for the account of the Nevadas which money was derived from the operation of the disputed mining claims. He prayed that Philex be made to deposit any amount due the Nevadas with the People's Bank and Trust Company, Baguio Branch, and that the amount of P350,000.00 already deposited with said bank for the Nevadas be frozen or sequestered. Petitioner was later joined in this motion by the Montillas and the Nicolases.

Acting upon this motion, respondent judge, on March 28, 1967, ordered Philex "to deposit with the People's Bank and Trust Company, Baguio Branch, the per-shipment royalties being paid to the Nevadas and to continue depositing the same until

[12] *Rollo*, p. 528-529.

[13] George T. Scholey intervened on April 28, 1967.

[14] *Rollo*, p. 757.

Supreme Court E-Library



further order of this Court." He further ordered that the amount of P237,051.93 now deposited with the said bank for the Nevadas in connection with Civil Case No. 1045 be frozen.

The Nevadas moved for reconsideration.

On April 13, 1967, respondent judge set aside his March 28, 1967 order on the ground that it was issued prematurely, no hearing having been conducted thereon prior to its issuance.

Petitioner and intervenor Nicolas moved to reconsider.

On August 19, 1967, respondent judge again commanded Philex to deposit with People's Bank and Trust Company, Baguio Branch, "all amounts and/or royalties being paid to the Nevadas and to continue depositing the same pending the termination of the case, and no withdrawal shall be made without order from this Court." Petitioner and the Montillas were ordered to file a bond of P200,000.00 each and the Nicolases, P100,000.00.

On September 7, 1967, the Nevadas sought reconsideration of the August 19, 1967 order. Petitioner, on the other hand, on December 14, 1967, moved for the transfer of the money deposited with People's Bank and Trust Company, Baguio Branch, to the Provident Savings Bank, Sta. Cruz, Manila. In a separate motion, plaintiff prayed that the P200,000-bond filed by the Montillas be considered as bond for all parties concerned as they agreed among themselves - plaintiff, Montillas and the Nicolases - to divide the premium for said bond.

On December 20, 1967, respondent judge denied the Nevadas' motion for reconsideration of the August 19, 1967 order and granted the motion to transfer the deposit to Provident Savings Bank, Sta. Cruz, Manila. Philex was also required in the same order to make all subsequent deposits with the Provident Savings Bank, Sta. Cruz, Manila. Also in the same order, the bond already filed by the Montillas was considered sufficient bond also for the plaintiff and the Nicolases. The amount of the bond required of plaintiff, the Montillas and the Nicolases was reduced from P500,000.00[15] to P200,000.00.

[15] This is the aggregate amount of the bonds required of the beneficiaries of the August 19, 1967 order, i.e., P200,000.00 for petitioner and the Montillas and P100,000.00 for the Nicolases.

Supreme Court E-Library



On January 6, 1968, reconsideration of this order was sought by Trinidad M. Nevada. It was denied on February 7, 1968.

While the question of whether or not Philex should be required to deposit the royalties it was paying to the Nevadas was on the trial court's table, petitioner, together with his alleged mother Magdalena Pio and his alleged brother Osting Pio, filed an application for the registration of the disputed area (increased to 900 has.) — Land Registration Case No. 223.

Back to the March 15,1966 order authorizing the issuance of a writ of preliminary injunction. This order did not benefit petitioner any. For, despite petitioner's prodding for the immediate issuance of the writ itself, no writ was ever issued by the respondent judge.

Obviously nettled by respondent judge's inaction, petitioner went to the Court of Appeals on a special civil action for mandamus.[16] He there prayed, amongst others, that respondent judge be ordered to issue the writ of preliminary injunction contained in his order of March 15, 1966.

On June 30, 1967, the Court of Appeals dismissed the petition for want of jurisdiction since petitioner's total demand was beyond P200,000.00.

Rejected by the Court of Appeals, petitioner, on July 28, 1967, commenced this mandamus suit with a prayer for a writ of preliminary injunction which was docketed as Case L-27849.

Petitioner's pertinent allegations are: that since April 14, 1966, when respondent judge approved the P50,000-injunction bond, respondent judge had not issued a writ; that he has already exercised his discretion in ordering the issuance of a writ of preliminary injunction after hearing on the merits Civil Case No. 1595 and therefore it is his ministerial duty together with respondent clerk of court to implement the order and failure to do so constitute an abuse of discretion; that the "continued operation of the registered mining claims of the petitioner by the respondent

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[16] CA-G.R. No. 39342-R, entitled "Mackenzie Pio, Petitioner, vs. Hon. Pio Marcos, etc., et al., Respondents."

Supreme Court E-Library



corporation will cause irreparable damages and injuries to the petitioner because time will come when all the minerals therein will have been completely mined out by said corporation before the final determination of the complaint of the petitioner;" and that petitioner has no remedy of appeal nor any plain, speedy and adequate remedy in the ordinary course of law.

Separate answers were filed by respondents clerk of court and Philex.

Respondents maintain that the issuance of a writ of preliminary injunction is a discretionary function, not ministerial; hence, mandamus does not lie to compel its issuance. More so in the present case, because of the pendency of a motion filed by Philex for the reconsideration of the order allowing its issuance. As a special defense, respondent clerk of court correctly averred that his being made a party in the suit is not justified because the issuance of the writ of preliminary injunction is a discretionary judicial function of the respondent judge and he merely implements the orders of the court.

For its part, Philex brands as false and untrue petitioner's allegation that it is operating the registered mining claims of petitioner; denies the allegation that its mining operation will cause great and irreparable injury to petitioner; and avers that the injunction bond of petitioner was inadequate and was approved by respondent judge without giving Philex the opportunity to oppose the same. And by way of negative, affirmative and special defenses, Philex alleged that it is not operating or mining any mineral claim belonging to petitioner; that what it is actually operating and mining is the Nevada Group of mining claims consisting of twelve lode mineral claims located by the following persons on the following dates, namely:.

| *Name of Claims* | *Name of Locators* | *Date of Location* |
|---|---|---|
| Edwin | Baldomero Nevada, Sr. | 6/16 - 30/55 |
| Edna | —do— | —do— |
| Elmo | —do— | —do— |
| Edgardo | —do— | —do— |
| Edmundo | Baldomero Nevada, J | —do— |
| Eming | —do— | —do— |

Supreme Court E-Library



| | | |
|---|---|---|
| Esther | —do— | —do— |
| Noel | —do— | —do— |
| Francisco | Trinidad M. Nevada | —do— |
| Leo | —do— | —do— |
| Benigno | —do— | —do— |
| Mariano | —do— | —do— |

that these mining claims have been duly surveyed and are covered by mining lease contracts executed by the Republic of the Philippines as lessor (represented by the Secretary of Agriculture and Natural Resources) in favor of the locators-owners, namely: Baldomero Nevada, Sr., Baldomero Nevada, Jr. and Trinidad M. Nevada; that petitioner's pretense that he inherited eight lode mineral claims from his father Artemio Pio is not true because petitioner is not the son of Artemio Pio as shown by the deed of extra-judicial partition and affidavit executed by the sole heirs of Artemio Pio, namely, his wife, Magdalena Pio, and two sons, Florendo Pio and Martin Sato; that petitioner's alleged mining claims have either been disposed of by Artemio Pio during his lifetime or have been declared abandoned for failure to perform the required annual assessment work thereon; and that petitioner is guilty of laches because despite petitioner's knowledge of the mining operations of Philex, having been employed as one of its security guards from 1957 to 1963, yet he belatedly filed the action for recovery of possession only on August 23, 1965.

Most of the intervenors in the trial court also intervened in the present proceedings.

There was Scholey who came in on August 31, 1967.[17] He moved to dismiss the present suit on the ground that this Court has no jurisdiction over the case: - As this Court takes the present case in the exercise of its appellate jurisdiction, it is essential that the court of origin has jurisdiction over the main case. But the Court of First Instance of Baguio, which is the court of origin, has no jurisdiction over petitioner's complaint for the recovery of possession (Civil Case No. 1595) which is the main case. Hence, this Court, too, cannot exercise its appellate

[17] Allowed to intervene on September 8, 1967.

Supreme Court E-Library



jurisdiction over a case which is not within the trial court's jurisdiction. He sticks to the view that it is the Director of Mines who has exclusive, original jurisdiction over petitioner's complaint as it involves conflicts or disputes arising out of mining rights.

The Nevadas intervened on September 5, 1967.[18] Attached to their motion to intervene was their "Answer in Intervention and Petition for Certiorari and Prohibition (with Prayer for Preliminary Injunction)." They deny that the issuance of a writ of preliminary injunction has become ministerial and they point out that every court has the inherent discretionary power to amend and control its processes and orders so as to make them conformable to law and justice. They deny, too, petitioner's allegation of irreparable injury arising from the continued operation by Philex of the mining claims it is presently operating because the depletion of the ores in said mining claims is no concern of his, the Nevadas being the lessees of said mining claims. Of importance amongst their five affirmative defenses are: (1) that the issuance of the writ of preliminary injunction is discretionary, not ministerial upon the court, *a quo,* hence, cannot be controlled by mandamus proceedings, and (2) that the Court of First Instance of Baguio has no jurisdiction over petitioner's complaint for the recovery of possession of the mineral claims and surface rights, the issues being exclusively within the jurisdiction of the Director of Mines under the provisions of Republic Act 4388 which became effective on June 19, 1965 and amended Section 61 of the Mining Act by removing the original jurisdiction over conflicts of mining claims from the court of first instance and lodging the same with the Director of Mines subject to appeal only to the Court of Appeals or the Supreme Court as the case may be.

This last mentioned affirmative defense was also used by the Nevadas as their basis for a petition for certiorari and prohibition "as a cross-claim against respondent court of first instance of Baguio City" which they prayed to be given due course and that relief be granted them by enjoining respondent court permanently from proceeding with the trial of the case below for lack of jurisdiction.

[18] Allowed to intervene on September 20, 1967.

Supreme Court E-Library



The Court eventually took note of such petition with cross-claim of the Nevadas in its resolution of November 22, 1971 wherein (overruling the Montillas' opposition and in the interest of resolving the issues which have already been fully discussed in the present proceedings) it ordered that such petition for certiorari and prohibition by way of cross-claim against respondent court seeking an entirely different and contradictory relief from that sought by petitioner against respondent court in the original petition for mandamus be separately docketed but retroactively deemed consolidated with the original petition, as follows:

"It appears from the records that the 'Answer in intervention and Petition for Certiorari and Prohibition,' dated August 28, 1967, of the intervenors Trinidad Nevada, et al., wherein they incorporated the petition for certiorari and prohibition in their answer 'as a cross-claim against respondent court' was admitted per this Court's resolution of September 20, 1967. (*Rollo*, p. 347) No docketing fee was paid by said intervenors for their petition, which was a separate and new petition, although related to the original petition in that said intervenors join respondent corporation in challenging the jurisdiction of respondent court, but the reliefs sought in the original petition and in said intervenors' petition are entirely different. The said intervenors are required to pay the corresponding docket and legal research fund fees within seventy-two hours from notice, and the Clerk shall thereupon properly docket and assign a separate docket number to the said intervenors' petition, to be duly entitled as 'Trinidad Nevada, et al. vs. Court of First Instance of Baguio City,' which shall then properly and retroactively be deemed consolidated with the present case."

The Nevadas' counter-petition was thus separately docketed as *Case L-34432.*

To go back to the various interventions at bar:

On October 3, 1967, the Union filed its motion for intervention with their answer in intervention attached.[19] They claim that the order of March 15, 1966 is void *ab initio* because it was issued without notice to indispensable parties like them. It prayed for the denial of the mandamus suit.

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[19] Allowed to intervene on October 20, 1967.

Supreme Court E-Library



On February 22, 1968, the Montillas moved to intervene because they would be adversely affected by the Nevadas' urgent motion for preliminary injunction filed on February 2, 1968 seeking to enjoin respondent judge from enforcing his August 19, 1967 and December 20, 1967 orders requiring Philex to deposit the royalties due the Nevadas with the Provident Savings Bank, Sta. Cruz, Manila[20] to which they claim to be entitled to the extent of two-thirds. They complained that as second intervenors in the case below who joined in securing the respondent court's deposits orders by virtue of their claim of two-thirds undivided ownership of the claims and of the corresponding royalties as expressly stated in its order of August 19, 1967, they should have been duly impleaded as parties hereto *vis a vis* their conflict with the Nevadas and the latters' motion for preliminary injunction against enforcement of respondent court's deposit orders of August 19, 1967 and December 20, 1967 (copy of which had been served on them).

On February 2, 1968[21] and March 20, 1968,[22] the Nevadas filed an Urgent Motion for Preliminary Writ of Injunction, claiming that by reason of the orders of deposit they were deprived of their principal source of income and that respondent judge was poised to resume the hearing of the case below and praying that enforcement of said orders be enjoined by this Court.

As prayed for, this Court, on March 21, 1968, issued a temporary restraining order against respondent judge restraining him "from further proceeding and from enforcing your order requiring Philex Mining Corporation to deposit the royalties due the Nevadas with the Provident Savings Bank in Civil Case No. 1595 of the Court of First Instance of Baguio, entitled 'Mackenzie Pio versus Philex Mining Corporation.'"

The Montillas filed on May 2, 1968 their motion praying for the reconsideration and setting aside of the Court's temporary restraining order against enforcement of respondent court's said

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[20] Allowed to intervene on Aug. 23, 1968, *Rollo*, p. 773.

[21] *Rollo*, p. 393.

[22] *Rollo*, p. 589.

Supreme Court E-Library



deposit orders. The Court set the case for hearing on September 23, 1968 and the parties filed in due course their respective memoranda in lieu of oral argument.

As already noted above, the Court per its resolution of November 22, 1971 ordered that the Nevadas' counter-petition for certiorari and prohibition challenging respondent court's jurisdiction over the case and seeking an entirely different and contradictory relief from that sought by petitioner in his original petition be docketed separately as Case L-34432 upon the Nevadas' payment of the corresponding docket fees.

I

Re: the petition in L-27849 for the issuance of a writ of mandamus commanding respondent court to issue the writ of preliminary injunction per his order dated March 15, 1966 ordering respondent Philex "to desist from the operation of its mill and crusher plants and all other machineries related thereto"

Petitioner seeks a writ of mandamus from this Court to compel respondent court to issue a writ of preliminary injunction enjoining respondent Philex from continuing with its mining operations over certain mining claims which petitioner claims to have inherited from his alleged father but which are duly leased by the Republic of the Philippines to the Nevadas who in turn granted Philex the operating contracts thereof on a royalty basis — on the claim that it is the respondent court's *ministerial,* not discretionary, duty to issue such preliminary injunction after its order of March 15, 1966[23] directing the issuance of such an injunction and after petitioner had filed the injunction bond fixed by it in the sum of P50,000.00.

1. The petition must fail because under the circumstances of record, the issuance of the injunction sought is manifestly *not* a ministerial duty, *viz* a duty which is so clear and specific as to leave no room for the exercise of discretion in its performance and its discharge requires neither the exercise of official discretion nor judgment.[24] The issuance of a writ of preliminary injunction

[23] *Supra,* pp. 4-5.

Supreme Court E-Library



involves the exercise of judgment and discretion and mandamus will not lie to compel the performance of such discretionary function. It is an established principle that the writ of mandamus may not be issued to control the discretion of a judge or to compel him to decide a case or a motion pending before him in a particular way — the writ being available only to compel him to exercise his discretion or his jurisdiction.

Corollarily, where there is no clear well-defined and certain right on the part of petitioner to the thing demanded (the writ of injunction) and no corresponding clear and specific legal duty on the part of respondent court to perform the act demanded (to issue the writ of injunction), mandamus will be denied.

2. The uncertain and ambivalent posture of petitioner is best exemplified by the Urgent Motion to Withdraw Petition for Mandamus with Preliminary Injunction without Prejudice filed by him on January 3, 1968,[25] where after his petition for mandamus had been given due course on August 2, 1967 he prayed that his petition "be considered withdrawn" on the alleged ground that the writ of preliminary injunction sought by him was discovered by him to be "already embodied in said order in question dated March 15, 1966." The Court of course ignored this vague and ambiguous motion (which seemed to be a self-serving ploy in the sense that if the petition were granted, the Court's granting thereof could conceivably be construed as agreeing with the gratuitous assertion that the writ of injunction sought was "already embodied" in the cited order, when precisely respondent court had refused in effect to issue such writ despite said order and the repeated motions of petitioner) and took no action thereon.

3. Another reason why the petition for mandamus must fail is prematurity — since the record shows that respondent Philex' motion of April 16, 1966 for reconsideration of respondent court's order of March 15, 1966 directing the issuance of preliminary injunction remains unresolved by respondent court, aside from

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[24] Lemi *vs.* Valencia, 26 SCRA 203 (1968).

[25] *Rollo*, p. 368.

Supreme Court E-Library



the fact that after the issuance of said order respondent court allowed six intervenors to come into the case, whose interventions obviously gave respondent court several second thoughts about issuing the injunction writ, resulting in its keeping under advisement up to now the pending motion for reconsideration thereof. It is equally obvious that while respondent court was considering the merits of said pending motion for reconsideration and by virtue thereof withheld the issuance of the writ of preliminary injunction, it is premature to seek a writ of mandamus to compel it to issue the injunction. The most that petitioner could do was to seek mandamus to compel it to resolve the pending motion for reconsideration one way or the other.

4. We now direct our attention to Philex' pending motion for reconsideration of the March 15, 1966 order. Ordinarily, respondent court as the trial court has the prerogative of passing upon the merits of the said motion. However, in view of the long period that has elapsed and to avoid further delay in the adjudication of the case below we find it to be in the interest of justice to resolve said motion so as to show the lack of a clear and certain right on petitioner's part that would warrant issuance of the prerogative writ of mandamus. Anyway, the documents necessary to the resolution of said motion are attached to the record of the present case.

The respondent judge, in issuing the March 15, 1966 order, took into account the following: that the evidence of plaintiff shows that he is allegedly the only forced heir of his late father, Artemio Pio, who was the original owner of the many old tunnels where he (Artemio Pio) and his hired laborers were extracting copper and gold ores; that he has registered several mining claims where those old tunnels were located; that he has registered for taxation purposes the surface rights of the lots where the old tunnels were dug; that Artemio Pio had worked on those old tunnels and introduced improvements on the surface thereon for about a year and spent around P50,000.00 until he died during the Japanese Occupation; that there was alleged continuous physical possession of the mineral mining claims registered in the name of Artemio Pio; that the alleged abandonment by plaintiff was due to the war when persons have to evacuate to

Supreme Court E-Library



several places and partly due to plaintiff's enlistment as a soldier.

These considerations were derived solely from the oral and documentary evidence presented by the plaintiff. Neither Philex nor any of the intervenors had presented any evidence as yet when the March 15, 1966 order was issued. It is easy to understand then why respondent judge formed a meritorious impression on plaintiff's claim. It will be noted that that order was even contrary to the respondent judge's order of September 10, 1965 holding in abeyance the trial court's ruling on the petition for a writ of preliminary injunction until respondent Philex as defendant had presented some evidence.

Aggrieved by said order, Philex moved for reconsideration. The allegations in the motion for reconsideration and the import of the documents annexed thereto show the following:

a) The mining claims Padcal, Ma, Sato, Shelan and Shelan Fr. were located by, and recorded in the Office of the Mining Recorder under the name of Artemio Pio. The mining claims Bayengan, Oking and Minas appeared to have been located and registered in the name of one Paulino Padio. The latter, however, quitclaimed his aforesaid claims in favor of Artemio Pio. Artemio Pio, in turn, assigned and conveyed all his rights, interests and title over all his aforesaid mining claims, excluding Shelan and Shelan Fr. but including those which he acquired from Paulino Padio, to the Bayengan Mines Association, an association organized on July 8, 1933 by Artemio and Charles P. Dugan.[26]

b) So it is that said association acquired title over the mining claims Padcal, Ma, Sato, Minas, Oking and Bayengan. On August 28, 1933, the Bayengan Mines Association sold the mining claims Ma and Oking to Charles P. Dugan;[27] the mining claims Minas and Sato to Francisco Ortigas;[28] the mining claims Padcal and Bayengan to Padcal Mines.[29] Artemio Pio and

[26] See: Articles of Association of Bayengan Mines Association (Article VIII), pp. 261-263, *Rollo.*

[27] Annex 3 of the Motion for Reconsideration, p. 269, *Rollo.*

[28] Annex 4 of the Motion for Reconsideration, p. 272, *Rollo.*

[29] Annex 5 of the Motion for Reconsideration, p. 278, *Rollo.*

Supreme Court E-Library



Charles P. Dugan further executed separate deeds of sale covering Padcal and Bayengan mining claims.

c) As to the mining claims Shelan and Shelan Fr., Philex[30] alleged that these two mining claims should be considered as only one mining claim by reason of an amendment of location made on July 6, 1934. However, these and the other mining claims just mentioned were abandoned and forfeited for failure of Artemio Pio or his successor-in-interest to perform the annual assessment works required by law, or to file the required affidavits of annual assessment works thereon.[31]

d) Philex further averred that it has been exploiting, mining and/or exploring the disputed mining claims since 1956 and continuously up to the present; that its nine (9) years of mining operations over the disputed mining claims (counted from 1956 to the filing of the complaint on August 23, 1965) was carried on with plaintiff's knowledge and therefore, with his implied consent.

e) That "with respect to the petitioner's alleged claim to the surface area of over 403 hectares, Philex averred that its documentary evidence would show that the area covered by his survey plan is within the Central Cordillera Forest Reserve established by Proclamation No. 217, dated February 16, 1929, of the then Governor-General, which area has not yet been released from the said reservation;" that Philex conducted mining operations on the disputed area and introduced improvements thereon such as cottages, bunkhouses, mill buildings, copper plants, office buildings, all with the knowledge of plaintiff who was hired by the defendant as one of its security guards.

These allegations in the motion for reconsideration, adequately backed as they are by pertinent documents, render dubious the

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[30] Annex 6 and 6A of the Motion for Reconsideration, pp. 278 and 281, *Rollo.*

[31] See: Annex 17 of the Nevadas' Answer in Intervention filed in this Court, p. 168, *Rollo.* It will be noted that the mining claims Shelan and Shelan Fr. are not amongst the mining claims without affidavits of annual assessment works.

Supreme Court E-Library



preliminary conclusions made by the respondent judge. It is not hard then to surmise that respondent judge's refusal to issue the writ of preliminary injunction itself was impelled by these allegations in the motion for reconsideration which put in serious doubt petitioner's claim.

5. All the more are we convinced that a reconsideration of the March 15, 1966 order is proper and that respondent court consequently withheld issuance of the injunction in view of the further allegations made by the intervenors-Heirs of Baldomero Nevada, Sr., et al. — in their answer (in intervention) filed on April 25, 1966 in the case below. Philex there alleged that:

"(a) Artemio Pio died in the year 1944 and left only as forced heirs the widow, Magdalena Pio and two sons, Fernando (sic) Pio and Martin Sato, this as per extra-judicial partition executed by the widow and the said two sons on May 21, 1947, acknowledged before Notary Public Ambrosio Navarro, and recorded in his notarial books as Doc. No. 369, Page No. 78, Book No. 2, Series of 1947, filed with the Mining Recorder on July 16, 1948, recorded in his book No. III, Record of Miscellaneous, Page No. 2, and for which Official Receipt No. 219584 dated July 16, 1948 was issued by the Mining Recorder Pedro Fuentes; Inheritance Tax on the properties by the extra-judicial partition was paid under Tax Receipt No. 208 dated July 15, 1948, and their Assessment No. A3452-44 in the amount of P27.64, as further evidenced by the affidavit of heirship executed by the widow, Magdalena Pio and the two sons, Fernando Pio and Martin Sato, on May 21, 1947, acknowledged before Notary Public Ambrosio Navarro, and recorded in his notarial books as Doc. No. 368, Page No. 77, Book No. 2, Series of 1947, copies of the Extra-Judicial Partition and the Affidavit executed by the sole heirs are attached to the answer marked as Annexes 'A' and 'B', respectively and made an integral part thereof:

"(b) Contrary to the allegation in petitioner's complaint, Artemio Pio 'did not leave several real estate properties and mineral claims' but left only the three mineral claims subject of the extra-judicial partition described in the next preceding paragraph, namely Ago Fr., Antonio Fr. and Linglingen Fr., all located in the Barrio of Samoyao, Municipality of Itogon, Benauet, as evidenced by the affidavit of heirship executed on May 21, 1947, by the widow Magdalena Pio, and the two heirs Fernando Pio and Martin Sato, Annex 'B' hereof, where they stated that Artemio Pio left only the mineral claims described in the extra-judicial partition Annex 'A'.

Supreme Court E-Library



6. There is the further charge by the same intervenors in their Answer in intervention filed with this Court that

"In a brazen attempt to mislead the respondent court and the other parties in the instant case, petitioner offered and presented as exhibits in the case below certain documents which were never touched upon or even mentioned during the presentation of petitioner's evidence. To conceal this attempt to smuggle spurious documents which were never identified nor touched upon during the hearing, petitioner willfully suppressed the actual documents which were identified or touched upon during the presentation of petitioner's evidence and used the exhibit marking of the suppressed documents for the spurious documents. The intervenors fully realize that the foregoing is a serious charge. As proof thereof, the intervenors respectfully point to the transcript of the stenographic notes taken during the hearing of this case below (Annex '19') which shows that petitioner Mackenzie Pio was asked to identify a certain document, a certain survey plan, which has been marked as Exhibit 'A'. This Exhibit 'A' is supposed to be a sketch plan, Psu-219553. In the course of the examination of the petitioner, the petitioner marked thereon the location of the improvements of the Philex Mining Corporation and the locations of the mining claims supposedly inherited by Mackenzie Pio from Artemio Pio, his alleged father. All these mining claims and improvements were marked as Exhibits 'A-2' to 'A-8'. This particular document, Exhibit 'A', on which various figures were marked as Exhibits 'A-2' to 'A-8', however, was suppressed by the petitioner. In lieu thereof, another document was presented by petitioner which does not contain the notations and markings which the transcript of the stenographic notes clearly shows were made by Mackenzie Pio in the course of his testimony. In addition, petitioner presented additional documents which have never been referred to during the hearing, such as Exhibit 'A-2', a supposed survey plan, allegedly approved by the Director of Lands; Exhibit 'A-2', another survey plan for Mackenzie Pio — Psu-210806 — which is very much different from Psu-219553, the only Psu mentioned during the trial of the case below; Exhibit 'A-4', which embodies the two survey plans of Mackenzie Pio which allegedly indicates the location of the mining claims being claimed now by Mackenzie Pio; and Exhibit 'A-5', a sketch supposedly indicating the location of the pit being operated by respondent Philex Mining Corporation. It will be noted that Exhibits 'A-2', 'A-3', 'A-4' and 'A-5' which were made to appear as four distinct documents by the petitioner, were actually nothing more than the markings of certain circles made by Mackenzie Pio on Exhibit 'A' (See Annex '19').

Supreme Court E-Library



"This willful suppression of documents marked during the course of the testimony of Mackenzie Pio, and the brazen intercalation of new documents, made by the petitioner, constituted petitioner's desperate attempt to establish the alleged identity between the lands being claimed by him with the mining claims which the Government has leased to the intervenors. It will be noted that petitioner claimed in his complaint, paragraph 2 thereof, that the land owned by him is nothing more than four million thirty-one thousand and two hundred forty-nine (4,032,249) square meters (paragraph 2 of the complaint) and that the same is covered by Psu-216093 subsequently hastily changed to Psu-219553. When it appeared from the ocular inspection, however, that Psu-219553 relied upon by Mackenzie Pio is way up north of the mining claims being operated by Philex Mining Corporation and leased by the Republic of the Philippines to the herein intervenors, petitioner procured and produced out of thin air another survey plan, Exhibit 'A-3', Psu-219806 (spurious since it was not identified during the presentation of petitioner's evidence), covering another parcel of land with an area of 5,753,048 square meters. Thus, from Exhibit 'A-4' (another spurious document intercalated by the petitioner) it will now appear that petitioner claims to be the owner not only of 4,031,249 square meters of land as stated in the complaint, but of an unbelievable area of eight million four hundred ninety thousand fifty-six (8,490,056) square meters, or approximately nine hundred (900) hectares."[32]

7. Petitioner did not bother to rebut these serious charges. And attached to the Nevadas' answer is a certification issued on August 6, 1963 by Onofre D. Alabanza, ex-officio Mining Recorder of the Office of the Mining Recorder, Baguio City, stating that "there are no affidavits of annual assessment works filed for the years 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961 and 1962 on the mining claims situated in the Municipalities of Itogon and Tuba, subprovince of Benguet, Mountain Province."[33] Amongst those mentioned in said certificate were the mining claims Sato, Padcal, Ma located by Artemio Pio and Bayengan, Oking and Minas located by Paulino Padio.

8. The sum of all these is that petitioner's title to the mining claims is not at all clear, well-defined and certain as to entitle

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[32] *Rollo* in L-34432, pp. 106-108; italics copied.

[33] Annex 17 of the Nevadas' Answer in Intervention filed in this Court, p. 168, *Rollo* in L-34432.

Supreme Court E-Library



him to mandamus. And, the denial of the writ on this ground is proper. It is a cardinal rule that injunction, as a rule, will not be granted to take property out of the possession or control of one party and place it into that of another whose title has not clearly been established by law.[34] As we have held in *Angela Estate, Inc. vs. Court of First Instance of Negros Occidental,*[35] "It is always a ground for denying injunction that the party seeking it has insufficient title or interest to sustain it, and no claim to the ultimate relief sought — in other words, that he shows no equity. Want of equity on the part of the plaintiff in attempting to use the injunctive process of the court to enforce a mere barren right will justify the court in refusing the relief even though the defendant has little equity on his side. The complainant's right or title, moreover, must be clear and unquestioned, for equity, as a rule. will not take cognizance of suits to establish title, and will not lend its preventive aid by injunction where the complainant's title or right is doubtful or disputed. He must stand on the strength of his own right or title, rather than on the weakness of that claimed by his adversary. The possibility of irreparable damage, without proof of violation of an actually existing right, is no ground for an injunction, being a mere *damnum absque injuria.*'"

II

Re: the counter-petition in L-34432 to declare respondent court as without jurisdiction over the case and to nullify its orders requiring that the royalties due from Philex to the Nevadas be deposited in a bank.

A. The Nevadas in their counter-petition assail respondent court's order of July 24, 1967[36] which denied Scholey's motion to dismiss (joined by the Nevadas) for lack of jurisdiction by

[34] Rodulfa *vs.* Alfonso, 76 Phil. 225, 231, citing Devesa *vs.* Arbes, 13 Phil. 273; Evangelista *vs.* Pedrenas, 27 Phil. 648; Asombra *vs.* Dorado and Gesmundo, 36 Phil. 883; Kabankalan Sugar Co. *vs.* Ruben, 54 Phil. 645. See also: Coronado *vs.* Tan, 96 Phil. 729, 732; Emilia *vs.* Bado, *supra,* at p. 187.

[35] 24 SCRA 500, 509-510.

[36] Annex 24, Nevadas' answer in intervention and petition for *certiorari* and prohibition, p. 217, *Rollo* in L-34432.

Supreme Court E-Library



virtue of amendments to the Mining Law under Republic Act 4388 which took effect on June 19, 1965 (before the filing of the complaint below on April 23, 1965) whereby exclusive original jurisdiction over "conflicts and disputes arising out of mining locations" was vested in the Director of Mines whose decision may be appealed to the Secretary of Agriculture and Natural Resources, whose decision in turn may be appealed to the Court of Appeals (on questions of fact) or to the Supreme Court (on questions of law) as the case may be, to the exclusion of courts of first instance, unlike *before* such amendments where review of the Secretary's decision was taken to the court of first instance as "the court of competent jurisdiction."

The Nevadas thus cite the provisions of Section 61 of the Mining Act as thus amended by Republic Act 4388, as follows:

"SEC. 61. *Conflicts and disputes arising out of mining locations* shall be submitted to the *Director of Mines* for *decision:* Provided, That the decision or order of the Director of Mines may be *appealed* to the *Secretary of Agriculture and Natural Resources* within thirty days from receipt of such decision or order. In case any one of the parties should disagree from the decision or order of the Secretary of Agriculture and Natural Resources, the matter may be taken to the *Court of Appeals* or the *Supreme Court,* as the case may be, within thirty days from the receipt of such decision or order, otherwise the said decision or order shall be final and binding upon the parties concerned. *Findings of facts* in the *decision or order of the Director of Mines* when *affirmed* by the *Secretary* of Agriculture and Natural Resources shall be *final* and *conclusive,* and the aggrieved party or parties desiring to appeal from such decision or order shall file in the *Supreme Court* a *petition for review* wherein *only questions of law* may be raised."[37]

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[37] Italics supplied. Section 73 with regard to adverse claims during the period of publication, as also amended by R.A. No. 4388 and providing that such controversy shall be settled or decided by the Director of Mines "in accordance with section sixty-one of the Act" unlike before the amendment where the adverse claim was submitted to the court of first instance (not the Mines Director) for adjudication is also cited to emphasize the complete exclusion of such disputes over mining claims from the jurisdiction of courts of first instance.

Supreme Court E-Library



Respondent court denied dismissal and upheld its jurisdiction over the case as per its resolution of July 24, 1967 in this wise:

"A motion to dismiss which raises the question of lack of jurisdiction of this Court is filed by the sixth intervenor. x x x After hearing the arguments for and against this motion by all the parties concerned, this Court is in conformity with the opinion that the amendments of the Mining Law referred to in the oral arguments involve conflict of mining rights which in this case might cover the leasehold right of the first intervenor Nevada as lessee from the government and the contract entered into by the Philex Mining Corporation with Nevada to operate the mining claims in dispute, in which case such conflict should be first presented before the Bureau of Mines whose decision may be appealed to the Secretary of Agriculture and Natural Resources and then to the Court of Appeals and Supreme Court as the case may warrant. However, the legal point involved in this case now is that fundamental and basic issue which is recovery of possession of mining claims and not mere conflict of mining locations. The Bureau of Mines, therefore, does not have jurisdiction to determine the question of recovery of possession of the subject matter of this case. It is this Court that has exclusive and original jurisdiction on the question of possession. In view of the foregoing, the motion to dismiss filed by the sixth intervenor is hereby denied. The verbal motion for reconsideration of this Order denying the motion to dismiss is likewise hereby denied."

While respondent court could have been more precise in its language, its above order was basically sound in its ruling in effect that judicial power was not conferred by Republic Act 4388 on the Director of Mines and that questions and controversies that are *judicial* not administrative in nature can be resolved only by the regular courts in whom is vested the judicial power to resolve and adjudicate such civil disputes and controversies between litigants in accordance with the established norms of law and justice.

To be precise, then, petitioner's complaint alleged two causes of action. In one cause of action (the second) petitioner disputes the right of Philex to conduct mining operations on about forty-eight mining claims allegedly belonging to him by right of inheritance from his deceased father and seeks the payment of P70,000 monthly from Philex "for actually operating and mining the mineral claims belonging to plaintiff." Since *Mining leases* have

Supreme Court E-Library



been duly awarded on the group of claims (referred to as the Nevada group of claims) by the Republic of the Philippines through the Secretary of Agriculture and Natural Resources to the Nevadas who in turn granted Philex operating rights thereon on a royalty basis, it is manifest that under the provisions of Republic Act 4388, such "conflicts and disputes arising out of mining locations" or adverse claims during the period of publication against applications for mining leases had to be submitted under *Sections 61 and 73 of the Mining Law* as amended by the cited Act to the Director of Mines (not to the court of first instance) for decision, subject to appeal to the department Secretary, whose decision may be reviewed on appeal only by the Court of Appeals or the Supreme Court as the case may be, under the terms and in the manner prescribed by the Act. This cause of action is thus *beyond* the *jurisdiction* of respondent court and must be dismissed. The basis of dismissal of this cause of action which in effect upholds Philex' right to operate the mining claims for failure of petitioner to timely avail of the administrative recourse provided by the Mining Law to submit his conflicting or adverse claims to the Mines Director, is likewise applicable to the fourth intervenors, the Ilongot Cultural Minority, whose vague claim of ownership (*supra,* p. 7) should likewise be dismissed.

In petitioner's other cause of action (the first), he claims that Philex occupied and constructed several buildings housing its mill and other plant facilities and staff cottages and employees' houses on about ten hectares of land allegedly belonging to him by right of inheritance and seeks recovery of the land and payment of P10,000 monthly "as *reasonable rentals* for *surface rights.*" This is a claim that is judicial in nature which can be resolved only by regular courts such as respondent court in the exercise of *judicial power* in accordance with the evidence and the applicable laws. Even the mining lease contract granted by the Republic to the Nevadas expressly provides that "In case mining is carried on within private lands, the lessee shall indemnify the private land owner the actual damage caused by the mining operation as well as the reasonable rental for the use of the said premises . . ." and provides for the payment of five (5%) per cent of the royalty payable by the lessee to the Government to

Supreme Court E-Library



the landowner for *surface rights.*[38] It may be noted of course, as indicated above, that the Nevadas' charges in their answer in intervention as discussed above put in very grave doubt the veracity and authenticity of petitioner's claims of ownership over the land and of his alleged claim of inheritance, but these questions of proof had best be resolved in the trial court and are not directly involved in these proceedings.

The doctrine of *Philex vs. Zaldivia*[39] reiterating the distinction between the primary powers granted by pertinent provisions of law to the Secretary of Agriculture and Natural Resources (and the bureau directors) of an *executive or administrative nature,* such as "granting of license, permits, lease, and contracts, or approving, rejecting, reinstating or cancelling applications, or deciding conflicting applications" and *controversies or disagreements* in *civil* or *contractual relations* between litigants which are questions of a *judicial nature* and may be decided and adjudicated only by the courts of justice as expounded in *Espinosa vs. Makalintal*[40] is controlling in the cases at bar.

In *Philex,* the Court expressly held that the ruling of *Espinosa vs. Makalintal* "notwithstanding the amendments introduced by Republic Act 4388 is still applicable . . ." stressing that "(W)e see nothing in Sections 61 and 73 of the Mining Law that indicates a legislative intent to confer *real judicial power* upon the Director of Mines."

B. We now come to the Nevadas' objection to the respondent court's orders of August 19, 1967 and December 20, 1967 which orders required Philex to deposit with the People's Bank & Trust Company, Baguio Branch (later with the Provident Savings Bank, Sta. Cruz, Manila) the royalties it is obligated to remit to the Nevadas under the operating contract executed in its favor by the Nevadas. While such orders were strictly not challenged in the Nevadas' answer in intervention and petition for certiorari and prohibition dated August 28, 1967 and admitted and docketed

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[38] Annex 1, Nevadas' answer in intervention, p. 117, Rollo in L-34432.

[39] *Supra,* fn. 1.

[40] 79 Phil. 134 (1947).

Supreme Court E-Library



as Case L-34432 under the Court's resolution of November 22, 1971 since said counter-petition based on the fifth affirmative defense was directed to pressing for the dismissal of the complaint on the ground of lack of jurisdiction of respondent court under the provisions of Republic Act 4388 and sought to enjoin respondent court from further proceeding with the trial of the case below, it will be remembered that on March 21, 1968, upon the Nevadas' urgent motion of February 2, 1968 alleging that said deposit orders were contrary to law[41] and that "the Nevadas were deprived of their principal source of income which they need not only for their support but also for the discharge of their obligation, the principal one of which is their tax liability to be paid on April 15, 1968",[42] this Court issued a temporary restraining order (without bond) against respondent judge enjoining him "from proceeding and from enforcing (his) order requiring Philex Mining Corporation to deposit the royalties due the Nevadas with the Provident Savings Bank." This temporary restraining order was issued even before intervention in the present proceedings of the Montillas as parties directly affected thereby and has been maintained to the present time.

With the respondent court's jurisdiction over the first cause of action of petitioner's complaint having been upheld, the Nevadas' primary ground of lack of jurisdiction for seeking nullification of the deposit orders has of course lost its basis.

Prescinding therefrom, however, it cannot be gainsaid that the Montillas' cross-claim as second intervenors against the Nevadas as first intervenors alleging the existence of a *trust* relationship and *co-ownership* between them concerning the mining claims in question and that the Nevadas particularly the deceased Baldomero Nevada, Sr. whom they had designated as their attorney-in-fact to manage and administer the same committed a *breach of trust* when he caused to be registered in his own name and in the names of his wife and son the said mining claims

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[41] See Urgent Motion for Preliminary Writ of Injunction, par. V, p. 402, *Rollo*.

[42] See Urgent ex parte Motion for Early Resolution of Intervenors' Motion for Preliminary Writ of Injunction, pp. 590-591, *Rollo*.

Supreme Court E-Library



*jointly belonging both* to the Montillas and the Nevadas in co-ownership and that they were therefore entitled to an *accounting* of the royalties received by the Nevadas from Philex and to receive two-thirds thereof as their *rightful share* could properly stand as a valid and separate suit within the lawful jurisdiction of respondent court.

Hence, respondent court duly acted within its jurisdiction and in the proper exercise of its discretion and judgment when after hearing the parties in open court and receiving their written arguments he issued the disputed deposit orders and required the movants to put up a substantial bond as the Montillas did file such bond in the required amount of P200,000.

Thus, respondent court's deposit order of August 19, 1967 ruled as follows:

"The ANSWER IN INTERVENTION WITH CROSS-CLAIM dated January 27, 1967, filed by the Second Intervenors, Heirs of Bonifacio Montilla, et al., clearly shows that they are entitled to an undivided ownership of the mineral claims involved in this case in the proportion of two thirds (2/3) for the Montillas and only one-third (1/3) for the Nevadas; consequently, the Montillas are entitled to a portion of the royalties due the Nevadas from defendant Philex Mining Corporation.

"IN THE COMPLAINT IN INTERVENTION dated February 25, 1967, filed by the Fifth Intervenors, Antonio Nicolas, Jr., et al., who alleged that they are likewise entitled to two mineral claims namely the DO FR. and the INSTANT, which were re-staked and renamed EDNA and EDGARDO by the Nevadas, it states that said Fifth Intervenors being the owners of two (2) of the twelve mineral claims now being operated by defendant Philex Mining Corporation, are likewise entitled to one-sixth (1/6) of the royalties due the Nevadas.

"While this case is pending in this Court, it is but just and proper that the rights and interests of the Plaintiff, Second Intervenors and Fifth Intervenors be protected.

"IN VIEW OF ALL THE FOREGOING, this Court hereby orders the defendant Philex Mining Corporation to deposit with the Peoples Bank and Trust Company, Baguio Branch, all amounts and/or royalties being paid to the Nevadas and to continue depositing the same pending the termination of this case, and no withdrawal shall be made without orders from this Court. It is further ordered that the defendant

Supreme Court E-Library



Philex Mining Corporation must submit to this Court a written report everytime a deposit is made as above required."[43]

That this question of accounting and recovery of the Montillas' share in the royalties originating from the *fiduciary and co-owner relationship* between them as asserted by the Montillas (likewise asserted by the Nicolases as fifth intervenors in the case below) is not within the exclusive *administrative* authority of the mines director but properly presents a *judicial controversy* within the exclusive power of the *courts* to resolve and adjudicate in the exercise of *judicial power* was stressed in Philex, *supra,* which involved a similar question of fiduciary relationship, when the Court said therein that.

"x x x The sole issue raised by it is a pure question of law, to wit, whether Scholey, during the period of his management of appellant's affairs, could lawfully locate mining claims for his sole and exclusive benefit, and transfer to others the rights thus acquired. There is here no question of fact nor matters requiring technological knowledge and experience. The issue is one to be resolved in conformity with *legal rules* and *standards* governing the powers of an agent, and the law's restrictions upon the latter's right to act for his own exclusive benefit while the agency is in force. Decision of such questions involves the *interpretation and application of the laws and norms of justice* established by society and constitutes essentially an exercise of the judicial power which under the Constitution is exclusively allocated to the Supreme Court and such courts as the Legislature may establish, and one that mining officials are ill-equipped to deal with."[44]

The Montillas' cross-claim against the Nevadas for accounting and recovery of their claimed share in the royalties paid by Philex manifestly involve *no conflict of mining claims or leases* that fall within the exclusive and primary authority of the mines director to decide, contrary to the Nevadas' contention.[45]

In fact, the Montillas join hands with the Nevadas in seeking the dismissal of petitioner's petition for mandamus to enjoin

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[43] *Rollo,* Pages 527-529.

[44] 43 SCRA at pp. 483-484; italics supplied.

[45] Nevadas' Resume Memorandum, *Rollo,* pages 949, 950- et seq.

Supreme Court E-Library



Philex from operating the mines[46] since they are obviously interested in the royalties that Philex pays under the operating contract granted by the Nevadas and seek only to *recover* what they claim to be their *rightful share* of such *royalties.*

Balancing in one equation the serious conflicting claims and interest of the Montillas (and the Nicolases) and the Nevadas, respondent judge's solution of requiring a substantial bond filed by the Montillas and entrusting to an impartial depositary the fruits (royalties) of the properties in dispute pending determination of their dispute seems a fair and just remedy and cannot be stricken down as constituting a grave abuse of discretion and the Court's temporary restraining order will now have to be lifted.

The royalties paid out by Philex to the Nevadas during the pendency of these proceedings were not so deposited by virtue of the Court's restraining order of March 21, 1968. These involve a sizable amount of royalties that accrued between the issuance of the respondent court's deposit orders of August 19, 1967 and December 20, 1967 to the present date or a period of almost seven years. To avoid the working of hardship and undue difficulty on the Nevadas, they shall not be required to deposit such royalties already received by them during the said period upon the filing of a counter-bond in favor of the Montillas (and the Nicolases) in such amount as may be deemed adequate and fixed by the trial court. With the lifting of the Court's said temporary restraining order of March 21, 1968, all royalties hereafter due from Philex to the Nevadas shall be deposited with the bank as required by the said deposit orders herein upheld.

**ACCORDINGLY,** the petition for mandamus in Case L-27849 is dismissed for failure of petitioner to show a clear and certain right to the preliminary injunction sought and an equally clear and specific legal duty on the part of respondent court to issue the injunction.

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[46] Montillas' Memorandum, *Rollo,* page 794, 853.

Supreme Court E-Library



The petition for *certiorari* and prohibition in Case L-34432 is also dismissed, except insofar as the second cause of action alleged in petitioner's complaint in Case 1595 of respondent court which disputes the right of Philex Mining Corporation to operate and exploit the mining claims in question and seeks to recover P70,000 monthly from said corporation "for actually operating and mining the mineral claims" is concerned; such cause of action is held to be beyond the jurisdiction of respondent court and the writ of prohibition commanding respondent to desist from further proceeding with the trial of said cause of action and to dismiss the same is hereby granted.

The supplemental prayer of intervenors Nevadas for the setting aside of the deposit orders of August 19, 1967 and December 20, 1967 is hereby denied and the temporary restraining order of March 21, 1968 restraining their enforcement is hereby lifted and set aside except that the deposit of the royalties actually paid to and received by the Nevadas since the issuance of said deposit orders to the date of this decision shall not be required of the Nevadas upon their filing of a counter-bond in such amount as may be deemed adequate and fixed by the trial court.

Respondent court is directed to forthwith resume the trial of the case below in conformity with this decision and to expedite the hearings and its decision on the merits.

Without costs.

*Makalintal, C.J., Ruiz Castro, Esguerra,* and *Muñoz Palma, JJ.,* concur.

*Makasiar, J.,* is on leave.