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THIRD DIVISION

[G.R. No. 138104. April 11, 2002]

MR HOLDINGS, LTD., *petitioner, vs.* **SHERIFF CARLOS P. BAJAR, SHERIFF FERDINAND M. JANDUSAY, SOLIDBANK CORPORATION, AND MARCOPPER MINING CORPORATION,** *respondents.*

SYNOPSIS

Asian Development Bank (ADB), a multilateral development finance institution, agreed to extend to respondent Marcopper Mining Corporation (Marcopper) a loan in the aggregate amount of US$40,000,000.00 to finance the latter's mining project at Sta. Cruz, Marinduque. To secure the loan, Marcopper executed in favor of ADB a "Deed of Real Estate and Chattel Mortgage" covering substantially all of its (Marcopper's) properties and assets in Marinduque. When Marcopper defaulted in the payment of its loan obligation, petitioner MR Holdings, Ltd., assumed Marcopper's obligation to ADB in the amount of US$18,453,450.02. Consequently, in an "Assignment Agreement", ADB assigned to petitioner all its rights, interests and obligations under the principal and complementary loan agreements. Respondent Marcopper likewise executed a "Deed of Assignment" in favor of petitioner. In the meantime, respondent Solidbank Corporation obtained a Partial Judgment against Marcopper from the RTC, Branch 26, Manila, in Civil Case No. 96-80083 entitled *"Solidbank Corporation vs. Marcopper Mining Corporation, John E. Loney, Jose E. Reyes and Teodulo C. Gabor, Jr.,"* Having learned of the scheduled auction sale, petitioner filed an "Affidavit of Third-Party Claim" asserting its ownership over all Marcopper's mining properties, equipment and facilities by virtue of the "Deed of Assignment." Upon the denial of its "Affidavit of Third-Party Claim" by the RTC of Manila, petitioner commenced with the RTC of Boac, Marinduque, a complaint for reinvindication of properties, etc., with prayer for preliminary injunction and temporary restraining order against respondents Solidbank, Marcopper, and the sheriffs assigned in implementing the writ of execution. The trial court denied petitioner's application for a writ of preliminary injunction on the ground that petitioner has no

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legal capacity to sue, it being a foreign corporation doing business in the Philippines without license. Unsatisfied, petitioner elevated the matter to the Court of Appeals on a Petition for *Certiorari*, Prohibition and Mandamus. The Court of Appeals affirmed the ruling of the trial court that petitioner has no legal capacity to sue in the Philippine courts because it is a foreign corporation doing business here without license. Hence, the present petition. Petitioner alleged that it is not "doing business" in the Philippines and characterized its participation in the assignment contracts (whereby Marcopper's assets were transferred to it) as mere isolated acts that cannot foreclose its right to sue in local courts.

The Supreme Court ruled in favor of petitioner and granted the petition. The Court ruled that a foreign corporation, which becomes the assignee of mining properties, facilities and equipment, cannot be automatically considered as doing business, nor presumed to have the intention of engaging in mining business. According to the Court, petitioner was engaged only in isolated acts or transactions. Single or isolated acts, contracts, or transactions of foreign corporations are not regarded as a doing or carrying on of business. Typical examples are the making of a single contract, sale, sale with the taking of a note and mortgage in the state to secure payment therefor, purchase, or note, or the mere commission of a tort. In the said instances, there is no purpose to do any other business within the country. The Court further ruled that the Court of Appeals' holding that petitioner was determined to be "doing business" in the Philippines is based mainly on conjectures and speculation. No effort was exerted by the appellate court to establish the nexus between petitioner's business and the acts supposed to constitute "doing business." Thus, whether the assignment contracts were incidental to petitioner's business or were continuation thereof is beyond determination.

SYLLABUS

1. **MERCANTILE LAW; PRIVATE CORPORATIONS; PRINCIPLES GOVERNING A FOREIGN CORPORATION'S RIGHT TO SUE IN LOCAL COURTS.**— The Court of Appeals ruled that petitioner has no legal capacity to sue in the Philippine courts because it is a foreign corporation doing business here without license. A

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review of this ruling does not pose much complexity as the principles governing a foreign corporation's right to sue in local courts have long been settled by our Corporation Law. These principles may be condensed in three statements, to wit: a) if a foreign corporation *does business* in the Philippines *without a license,* it *cannot sue* before the Philippine courts; *b)* if a foreign corporation is *not doing business* in the Philippines, it *needs no license to sue* before Philippine courts on an isolated transaction or on a cause of action entirely independent of any business transaction; and *c)* if a foreign corporation *does business* in the Philippines with the required license, it *can sue* before Philippine courts on any transaction. Apparently, it is not the absence of the prescribed license but the "doing (of) business" in the Philippines without such license which debars the foreign corporation from access to our courts.

2. **ID.; ID.; FOREIGN CORPORATION'S RIGHT TO SUE IN LOCAL COURTS; NEXUS BETWEEN PETITIONER'S BUSINESS AND THE ACTS SUPPOSED TO CONSTITUTE "DOING BUSINESS"; NOT ESTABLISHED IN CASE AT BAR.**— In the case at bar, the Court of Appeals categorized as "doing business" petitioner's participation under the "Assignment Agreement" and the "Deed of Assignment." This is simply untenable. The expression "doing business" should not be given such a strict and literal construction as to make it apply to any corporate dealing whatever. At this early stage and with petitioner's acts or transactions limited to the assignment contracts, it cannot be said that it had performed acts intended to continue the business for which it was organized. *It may not be amiss to point out that the purpose or business for which petitioner was organized is not discernible in the records. No effort was exerted by the Court of Appeals to establish the nexus between petitioner's business and the acts supposed to constitute "doing business." Thus, whether the assignment contracts were incidental to petitioner's business or were continuation thereof is beyond determination.* We cannot apply the case cited by the Court of Appeals, *Far East Int'l Import and Export Corp. vs. Nankai Kogyo Co., Ltd.,* which held that a single act may still constitute "doing business" if "it is not merely incidental or casual, but is of such character as distinctly to indicate a purpose on the part of the foreign corporation to do

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other business in the state." In said case, there was an express admission from an official of the foreign corporation that he was sent to the Philippines to look into the operation of mines, thereby revealing the foreign corporation's desire to continue engaging in business here. But in the case at bar, there is no evidence of similar desire or intent. Unarguably, petitioner may, *as the Court of Appeals suggested*, decide to operate Marcopper's mining business, but, of course, at this stage, that is a mere speculation. Or it may decide to sell the credit secured by the mining properties to an offshore investor, in which case the acts will still be isolated transactions. *To see through the present facts an intention on the part of petitioner to start a series of business transaction is to rest on assumptions or probabilities falling short of actual proof. Courts should never base its judgments on a state of facts so inadequately developed that it cannot be determined where inference ends and conjecture begins.*

3. **ID.; ID.; ID.; A FOREIGN CORPORATION, WHICH BECOMES THE ASSIGNEE OF MINING PROPERTIES, FACILITIES AND EQUIPMENT CANNOT BE AUTOMATICALLY CONSIDERED AS DOING BUSINESS, NOR PRESUMED TO HAVE THE INTENTION OF ENGAGING IN MINING BUSINESS; CASE AT BAR.**— The Court of Appeals' holding that petitioner was determined to be "doing business" in the Philippines is based mainly on conjectures and speculation. In concluding that the "*unmistakable intention*" of petitioner is to continue Marcopper's business, the Court of Appeals hangs on the wobbly premise that "there is no other way for petitioner to recover its huge financial investments which it poured into Marcopper's rehabilitation without it (petitioner) continuing Marcopper's business in the country." This is a mere presumption. Absent overt acts of petitioner from which we may directly infer its intention to continue Marcopper's business, we cannot give our concurrence. Significantly, a view subscribed upon by many authorities is that the mere ownership by a foreign corporation of a property in a certain state, *unaccompanied by its active use in furtherance of the business for which it was formed,* is insufficient in itself to constitute doing business. In *Chittim vs. Belle Fourche Bentonite Products Co.,* it was held that *even if a foreign corporation purchased and took conveyances of a mining claim, did some assessment work thereon,*

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and endeavored to sell it, its acts will not constitute the doing of business so as to subject the corporation to the statutory requirements for the transacting of business. On the same vein, petitioner, a foreign corporation, which becomes the assignee of mining properties, facilities and equipment cannot be automatically considered as doing business, nor presumed to have the intention of engaging in mining business.

4. **ID.; ID.; ID.; ID.; PETITIONER IS CONSIDERED ENGAGED ONLY IN ISOLATED ACTS OR TRANSACTIONS WHICH ARE NOT REGARDED AS DOING OR CARRYING ON OF BUSINESS.**— Long before petitioner assumed Marcopper's debt to ADB and became their assignee under the two assignment contracts, there already existed a "Support and Standby Credit Agreement" between ADB and Placer Dome whereby the latter bound itself to provide cash flow support for Marcopper's payment of its obligations to ADB. Plainly, petitioner's payment of US$ 18,453, 450.12 to ADB was more of a fulfillment of an obligation under the "Support and Standby Credit Agreement" rather than an investment. That petitioner had to step into the shoes of ADB as Marcopper's creditor was just a necessary legal consequence of the transactions that transpired. Also, we must hasten to add that the "Support and Standby Credit Agreement" was executed *four (4) years prior to Marcopper's insolvency,* hence, the alleged "*intention of petitioner to continue Marcopper's business*" could have no basis for at that time, Marcopper's fate cannot yet be determined. In the final analysis, we are convinced that petitioner was engaged only in isolated acts or transactions. Single or isolated acts, contracts, or transactions of foreign corporations are not regarded as a doing or carrying on of business. Typical examples of these are the making of a single contract, sale, sale with the taking of a note and mortgage in the state to secure payment therefor, purchase, or note, or the mere commission of a tort. In these instances, there is *no purpose* to do any other business within the country.

5. **ID.; ID.; FACT THAT A CORPORATION OWNS ALL OF THE STOCKS OF ANOTHER CORPORATION, TAKEN ALONE IS NOT SUFFICIENT TO JUSTIFY THEIR BEING TREATED AS ONE ENTITY.**— The record is lacking in circumstances that would suggest that petitioner corporation, Placer Dome and Marcopper are one and the same entity. While

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admittedly, petitioner is a wholly-owned subsidiary of Placer Dome, which, in turn, was then a minority stockholder of Marcopper, however, *the mere fact that a corporation owns all of the stocks of another corporation, taken alone is not sufficient to justify their being treated as one entity.* If used to perform legitimate functions, a subsidiary's separate existence shall be respected, and the liability of the parent corporation as well as the subsidiary will be confined to those arising in their respective business.

6. **ID.; ID.; DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION; NOT APPLICABLE IN CASE AT BAR; NO FACTORS INDICATING THAT PETITIONER IS A MERE INSTRUMENTALITY OF ANOTHER CORPORATION.**— *In this catena of circumstances, what is only extant in the records is the matter of stock ownership. There are no other factors indicative that petitioner is a mere instrumentality of Marcopper or Placer Dome.* The mere fact that Placer Dome agreed, under the terms of the "Support and Standby Credit Agreement" to provide Marcopper with cash flow support in paying its obligations to ADB, does not mean that its personality has merged with that of Marcopper. This singular undertaking, performed by Placer Dome with its own stockholders in Canada and elsewhere, is not a sufficient ground to merge its corporate personality with Marcopper which has its own set of shareholders, dominated mostly by Filipino citizens. The same view applies to petitioner's payment of Marcopper's remaining debt to ADB. With the foregoing considerations and the absence of fraud in the transaction of the three foreign corporations, we find it improper to pierce the veil of corporate fiction – that equitable doctrine developed to address situations where the corporate personality of a corporation is abused or used for wrongful purposes.

7. **CIVIL LAW; CONTRACTS; RESCISSIBLE CONTRACTS; THE ASSIGNMENT CONTRACTS WERE EXECUTED IN GOOD FAITH AND CONSIDERED NOT IN FRAUD OF CREDITORS.**— The facts of the case so far show that the assignment contracts were executed in good faith. The execution of the "Assignment Agreement" on March 20, 1997 and the "Deed of Assignment" on December 8,1997 is not the *alpha* of this case. While the execution of these assignment contracts almost coincided with the rendition on May 7, 1997 of the

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Partial Judgment in Civil Case No. 96-80083 by the Manila RTC, however, there was no intention on the part of petitioner to defeat Solidbank's claim. It bears reiterating that as early as November 4, 1992, Placer Dome had already bound itself under a "Support and Standby Credit Agreement" to provide Marcopper with cash flow support for the payment to ADB of its obligations. When Marcopper ceased operations on account of disastrous mine tailings spill into the Boac River and ADB pressed for payment of the loan, Placer Dome agreed to have its subsidiary, herein petitioner, paid ADB the amount of US $18,453,450.12. Thereupon, ADB and Marcopper executed, respectively, in favor of petitioner an "Assignment Agreement" and a "Deed of Assignment." Obviously, the assignment contracts were connected with transactions that happened long before the rendition in 1997 of the Partial Judgment in Civil Case No. 96-80083 by the Manila RTC. Those contracts cannot be viewed in isolation. If we may add, it is highly inconceivable that ADB, a reputable international financial organization, will connive with Marcopper to feign or simulate a contract in 1992 just to defraud Solidbank for its claim four years thereafter. And it is equally incredible for petitioner to be paying the huge sum of US$18,453,450.12 to ADB only for the purpose of defrauding Solidbank of the sum of ₱52,970,756.89.

8. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; ALLEGATION CANNOT PROSPER BECAUSE PETITIONER HAS A SEPARATE PERSONALITY AND THEREFORE HAS THE RIGHT TO PURSUE ITS THIRD PARTY CLAIM BY FILING THE INDEPENDENT REINVIDICATORY ACTION; CASE AT BAR.**— On the issue of forum shopping, there could have been a violation of the rules thereon if petitioner and Marcopper were indeed one and the same entity. But since petitioner has a separate personality, it has the right to pursue its third-party claim by filing the independent reinvindicatory action with the RTC of Boac, Marinduque, pursuant to Rule 39, Section 16 of the 1997 Rules of Civil Procedures. This remedy has been recognized in a long line of cases decided by this Court. This "reinvindicatory action" has for its object the recovery of ownership or possession of the property seized by the sheriff, despite the third party claim, as well as damages resulting therefrom, and it may be brought against the sheriff and such other parties as may be alleged to have connived with him in

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the supposedly wrongful execution proceedings, such as the judgment creditor himself. *Such action is an entirely separate and distinct action from that in which execution has been issued.* Thus, there being no identity of parties and cause of action between Civil Case No. 98-13 (RTC, Boac) and those cases filed by Marcopper, including Civil Case No. 96-80083 (RTC, Manila) as to give rise to *res judicata* or *litis pendentia*, Solidbank's allegation of forum-shopping cannot prosper.

9. **ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; PETITIONER'S RIGHT TO STOP THE FURTHER EXECUTION OF THE PROPERTIES COVERED BY THE ASSIGNMENT CONTRACTS WAS SUFFICIENTLY ESTABLISHED; TO ALLOW EXECUTION WOULD SURELY WORK INJUSTICE TO IT AND RENDER THE JUDGMENT ON THE REINVIDICATORY ACTION, SHOULD IT BE FAVORABLE, INNEFECTUAL.**— We find petitioner to be entitled to the issuance of a writ of preliminary injunction. Petitioner's right to stop the further execution of the properties covered by the assignment contracts is clear under the facts so far established. An execution can be issued only against a party and not against one who did not have his day in court. The duty of the sheriff is to levy the property of the judgment debtor not that of a third person. For, as the saying goes, one man's goods shall not be sold for another man's debts. To allow the execution of petitioner's properties would surely work injustice to it and render the judgment on the reinvindicatory action, should it be favorable, ineffectual. In *Arabay, Inc., vs. Salvador*, this Court held that an injunction is a proper remedy to prevent a sheriff from selling the property of one person for the purpose of paying the debts of another; and that while the general rule is that no court has authority to interfere by injunction with the judgments or decrees of another court of equal or concurrent or coordinate jurisdiction, however, it is not so when a third-party claimant is involved.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.

Quasha Ancheta Pena & Nolasco for private respondent MMC.

De Los Reyes Banaga Briones & Associates for respondent Solidbank Corp.

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DECISION

SANDOVAL-GUTIERREZ, *J.*:

In the present Petition for Review on *Certiorari*, petitioner MR Holdings, Ltd. assails the *a)* Decision[1] dated January 8, 1999 of the Court of Appeals in CA-G.R. SP No. 49226 finding no grave abuse of discretion on the part of Judge Leonardo P. Ansaldo of the Regional Trial Court (RTC), Branch 94, Boac, Marinduque, in denying petitioner's application for a writ of preliminary injunction;[2] and *b)* Resolution[3] dated March 29, 1999 denying petitioner's motion for reconsideration.

The facts of the case are as follows:

Under a "Principal Loan Agreement"[4] and "Complementary Loan Agreement,"[5] both dated November 4, 1992, Asian Development Bank (ADB), a multilateral development finance institution, agreed to extend to Marcopper Mining Corporation (Marcopper) a loan in the aggregate amount of US$40,000,000.00 to finance the latter's mining project at Sta. Cruz, Marinduque. The principal loan of US$15,000,000.00 was sourced from ADB's ordinary capital resources, while the complementary loan of US$25,000,000.00 was funded by the Bank of Nova Scotia, a participating finance institution.

On even date, ADB and Placer Dome, Inc., (Placer Dome), a foreign corporation which owns 40% of Marcopper, executed a "Support and Standby Credit Agreement" whereby the latter agreed to provide Marcopper with cash flow support for the payment of its obligations to ADB.

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[1] *Rollo*, pp. 10-29. Former Justice Demetrio S. Demetria wrote the *ponencia* with Justices Ramon A. Barcelona (Ret.) and Rodrigo V. Cosico concurring.

[2] See Order dated October 6, 1998, *Rollo*, pp. 247-256.

[3] *Rollo*, p.31.

[4] *Ibid.*, pp. 534-575.

[5] *Ibid.*, pp. 576-602.

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To secure the loan, Marcopper executed in favor of ADB a "Deed of Real Estate and Chattel Mortgage"[6] dated November 11, 1992, covering substantially all of its (Marcopper's) properties and assets in Marinduque. It was registered with the Register of Deeds on November 12, 1992.

When Marcopper defaulted in the payment of its loan obligation, Placer Dome, in fulfillment of its undertaking under the "Support and Standby Credit Agreement," and presumably to preserve its international credit standing, agreed to have its subsidiary corporation, petitioner MR Holding, Ltd., assumed Marcopper's obligation to ADB in the amount of US$ 18,453,450.02. Consequently, in an "Assignment Agreement"[7] dated March 20, 1997, ADB assigned to petitioner all its rights, interests and obligations under the principal and complementary loan agreements, ("Deed of Real Estate and Chattel Mortgage," and "Support and Standby Credit Agreement"). On December 8, 1997, Marcopper likewise executed a "Deed of Assignment"[8] in favor of petitioner. Under its provisions, Marcopper assigns, transfers, cedes and conveys to petitioner, its assigns and/or successors-in-interest all of its (Marcopper's) properties, mining equipment and facilities, to wit:

Land and Mining Rights
Building and Other Structures
Other Land Improvements
Machineries & Equipment, and Warehouse Inventory
Mine/Mobile Equipment
Transportation Equipment and Furniture & Fixtures

Meanwhile, it appeared that on May 7, 1997, Solidbank Corporation (Solidbank) obtained a Partial Judgment[9] against Marcopper from the RTC, Branch 26, Manila, in Civil Case

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[6] *Rollo*, pp. 119-156.

[7] *Ibid.*, pp. 157-172.

[8] *Ibid.*, pp. 173-174.

[9] Penned by Guillermo L. Loja, Sr.

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No. 96-80083 entitled *"Solidbank Corporation vs. Marcopper Mining Corporation, John E. Loney, Jose E. Reyes and Teodulo C. Gabor, Jr.,"* the decretal portion of which reads:

"*WHEREFORE, PREMISES CONSIDERED*, partial judgment is hereby rendered ordering defendant Marcopper Mining Corporation, as follows:

1. To pay plaintiff Solidbank the sum of Fifty Two Million Nine Hundred Seventy Thousand Pesos Seven Hundred Fifty Six and 89/100 only (PHP 52,970,756.89), plus interest and charges until fully paid;

2. To pay an amount equivalent to Ten Percent (10%) of above-stated amount as attorney's fees; and

3. To pay the costs of suit.

"SO ORDERED."

Upon Solidbank's motion, the RTC of Manila issued a writ of execution pending appeal directing Carlos P. Bajar, respondent sheriff, to require Marcopper "to pay the sums of money to satisfy the Partial Judgment."[10] Thereafter, respondent Bajar issued two notices of levy on Marcopper's personal and real properties, and over all its stocks of scrap iron and unserviceable mining equipment.[11] Together with sheriff Ferdinand M. Jandusay (also a respondent) of the RTC, Branch 94, Boac, Marinduque, respondent Bajar issued two notices setting the public auction sale of the levied properties on August 27, 1998 at the Marcopper mine site.[12]

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[10] *Rollo*, pp. 182-183.

[11] 1. Notice of Levy on Personal Property/ies Pursuant to Writ of Execution Pending Appeal dated July 6, 1998, *Rollo*, p. 187.

2. Notice of Levy Upon Chattels/Personal Properties Pursuant to Writ of Execution Pending Appeal dated August 17, 1998, *Rollo*, p. 189.

[12] 1. "Notice to Parties of Sheriff's Public Auction Sale," dated August 19, 1998, *Rollo*, p. 190.

2. "Notice of Sale on Execution of Chattels/Personal Properties," dated August 19, 1998, *Rollo*, p. 191.

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Having learned of the scheduled auction sale, petitioner served an "Affidavit of Third-Party Claim"[13] upon respondent sheriffs on August 26, 1998, asserting its ownership over all Marcopper's mining properties, equipment and facilities by virtue of the "Deed of Assignment."

Upon the denial of its "Affidavit of Third–Party Claim" by the RTC of Manila,[14] petitioner commenced with the RTC of Boac, Marinduque, presided by Judge Leonardo P. Ansaldo, a complaint for reinvindication of properties, *etc.*, with prayer for preliminary injunction and temporary restraining order against respondents Solidbank, Marcopper, and sheriffs Bajar and Jandusay.[15] The case was docketed as Civil Case No. 98-13.

In an Order[16] dated October 6, 1998, Judge Ansaldo denied petitioner's application for a writ of preliminary injunction on the ground that ***a)*** petitioner has no legal capacity to sue, it being a foreign corporation doing business in the Philippines without license; ***b)*** an injunction will amount "to staying the execution of a final judgment by a court of co-equal and concurrent jurisdiction"; and ***c)*** the validity of the "Assignment Agreement" and the "Deed of Assignment" has been "put into serious question by the timing of their execution and registration."

Unsatisfied, petitioner elevated the matter to the Court of Appeals on a Petition for *Certiorari*, Prohibition and *Mandamus*, docketed therein as CA-G.R. SP No. 49226. On January 8, 1999, the Court of Appeals rendered a Decision holding that Judge Ansaldo did not commit grave abuse of discretion in denying petitioner's prayer for a writ of preliminary injunction, ratiocinating as follows:

"Petitioner contends that it has the legal capacity to sue and seek redress from Philippine courts as it is a non-resident foreign

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[13] *Rollo*, pp. 192-194.

[14] See Order dated September 2, 1998 of Judge Guillermo L. Loja, Sr., *Rollo*, pp. 197-198.

[15] *Rollo*, pp. 203-218.

[16] *Rollo*, pp. 247-256.

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corporation not doing business in the Philippines and suing on isolated transactions.

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"We agree with the finding of the respondent court that petitioner is not suing on an isolated transaction as it claims to be, as it is very obvious from the deed of assignment and its relationships with Marcopper and Placer Dome, Inc. that its unmistakable intention is to continue the operations of Marcopper and shield its properties/ assets from the reach of legitimate creditors, even those holding valid and executory court judgments against it. There is no other way for petitioner to recover its huge financial investments which it poured into Marcopper's rehabilitation and the local situs where the Deeds of Assignment were executed, without petitioner continuing to do business in the country.

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"While petitioner may just be an assignee to the Deeds of Assignment, it may still fall within the meaning of "doing business" in light of the Supreme Court ruling in the case of ***Far East International Import and Export Corporation vs. Nankai Kogyo Co.,*** *6 SCRA 725, that:*

> *'Where a single act or transaction however is not merely incidental or casual but indicates the foreign corporation's intention to do other business in the Philippines, said single act or transaction constitutes doing or engaging in or transacting business in the Philippines.'*

"Furthermore, the court went further by declaring that even a single act may constitute doing business if it is intended to be the beginning of a series of transactions. ***(Far East International Import and Export Corporation vs. Nankai Kogyo Co.*** *supra).*

"On the issue of whether petitioner is the *bona fide* owner of all the mining facilities and equipment of Marcopper, petitioner relies heavily on the Assignment Agreement allegedly executed on March 20, 1997 wherein all the rights and interest of Asian Development Bank (ADB) in a purported Loan Agreement were ceded and transferred in favor of the petitioner as assignee, in addition to a subsequent Deed of Assignment dated December 28, 1997 conveying absolutely all the properties, mining equipment and facilities of Marcopper in favor of petitioner.

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"The Deeds of Assignment executed in favor of petitioner cannot be binding on the judgment creditor, private respondent Solidbank, under the general legal principle that contracts can only bind the parties who had entered into it, and it cannot favor or prejudice a third person (*Quano vs. Court of Appeals*, 211 SCRA 40). Moreover, by express stipulation, the said deeds shall be governed, interpreted and construed in accordance with laws of New York.

"The Deeds of Assignment executed by Marcopper, through its President, Atty. Teodulo C. Gabor, Jr., were clearly made in bad faith and in fraud of creditors, particularly private respondent Solidbank. The first Assignment Agreement purportedly executed on March 20, 1997 was entered into after Solidbank had filed on September 19, 1996 a case against Marcopper for collection of sum of money before Branch 26 of the Regional Trial Court docketed as Civil Case No. 96-80083. The second Deed of Assignment purportedly executed on December 28, 1997 was entered into by President Gabor after Solidbank had filed its Motion for Partial Summary Judgment, after the rendition by Branch 26 of the Regional Trial Court of Manila of a Partial Summary Judgment and after the said trial court had issued a writ of execution, and which judgment was later affirmed by the Court of Appeals. While the assignments (which were not registered with the Registry of Property as required by Article 1625 of the new Civil Code) may be valid between the parties thereof, it produces no effect as against third parties. The purported execution of the Deeds of Assignment in favor of petitioner was in violation of Article 1387 of the New Civil Code x x x." (Italics Supplied)

Hence, the present Petition for Review on *Certiorari* by MR Holdings, Ltd. moored on the following grounds:

"A. THE HONORABLE COURT OF APPEALS COMMITS A REVERSIBLE ERROR IN COMPLETELY DISREGARDING AS A MATERIAL FACT OF THE CASE THE EXISTENCE OF THE PRIOR, REGISTERED 1992 DEED OF REAL ESTATE AND CHATTEL MORTGAGE CREATING A LIEN OVER THE LEVIED PROPERTIES, SUBJECT OF THE ASSIGNMENT AGREEMENT DATED MARCH 20, 1997, THUS, MATERIALLY CONTRIBUTING TO THE SAID COURT'S MISPERCEPTION AND MISAPPRECIATION OF THE MERITS OF PETITIONER'S CASE.

B. THE HONORABLE COURT OF APPEALS COMMITS A REVERSIBLE ERROR IN MAKING A FACTUAL FINDING THAT THE

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SAID ASSIGNMENT AGREEMENT IS NOT REGISTERED, THE SAME BEING CONTRARY TO THE FACTS ON RECORD, THUS, MATERIALLY CONTRIBUTING TO THE SAID COURT'S MISPERCEPTION AND MISAPPRECIATION OF THE MERITS OF PETITIONER'S CASE.

C. THE HONORABLE COURT OF APPEALS COMMITS A REVERSIBLE ERROR IN MAKING A FACTUAL FINDING ON THE EXISTENCE OF AN ATTACHMENT ON THE PROPERTIES SUBJECT OF INSTANT CASE, THE SAME BEING CONTRARY TO THE FACTS ON RECORD, THUS, MATERIALLY CONTRIBUTING TO THE SAID COURT'S MISPERCEPTION AND MISAPPRECIATION OF THE MERITS OF PETITIONER'S CASE.

D. THE HONORABLE COURT OF APPEALS COMMITS A REVERSIBLE ERROR IN HOLDING THAT THE SAID ASSIGNMENT AGREEMENT AND THE DEED OF ASSIGNMENT ARE NOT BINDING ON RESPONDENT SOLIDBANK WHO IS NOT A PARTY THERETO, THE SAME BEING CONTRARY TO LAW AND ESTABLISHED JURISPRUDENCE ON PRIOR REGISTERED MORTGAGE LIENS AND ON PREFERENCE OF CREDITS.

E. THE HONORABLE COURT OF APPEALS COMMITS A REVERSIBLE ERROR IN FINDING THAT THE AFOREMENTIONED ASSIGNMENT AGREEMENT AND DEED OF ASSIGNMENT ARE SHAM, SIMULATED, OF DUBIOUS CHARACTER, AND WERE MADE IN BAD FAITH AND IN FRAUD OF CREDITORS, PARTICULARLY RESPONDENT SOLIDBANK, THE SAME BEING IN COMPLETE DISREGARD OF, VIZ: (1) THE LAW AND ESTABLISHED JURISPRUDENCE ON PRIOR, REGISTERED MORTGAGE LIENS AND ON PREFERENCE OF CREDITS, BY REASON OF WHICH THERE EXISTS NO CAUSAL CONNECTION BETWEEN THE SAID CONTRACTS AND THE PROCEEDINGS IN CIVIL CASE NO. 96-80083; (2) THAT THE ASIAN DEVELOPMENT BANK WILL NOT OR COULD NOT HAVE AGREED TO A SHAM; SIMULATED, DUBIOUS AND FRAUDULENT TRANSACTION; AND (3) THAT RESPONDENT SOLIDBANK'S BIGGEST STOCKHOLDER, THE BANK OF NOVA SCOTIA, WAS A MAJOR BENEFICIARY OF THE ASSIGNMENT AGREEMENT IN QUESTION.

F. THE HONORABLE COURT OF APPEALS COMMITS A REVERSIBLE ERROR IN HOLDING THAT PETITIONER IS WITHOUT LEGAL CAPACITY TO SUE AND SEEK REDRESS FROM PHILIPPINE COURTS, IT BEING THE CASE THAT SECTION 133

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OF THE CORPORATION CODE IS WITHOUT APPLICATION TO PETITIONER, AND IT BEING THE CASE THAT THE SAID COURT MERELY RELIED ON SURMISES AND CONJECTURES IN OPINING THAT PETITIONER INTENDS TO DO BUSINESS IN THE PHILIPPINES.

G. THE HONORABLE COURT OF APPEALS COMMITS A REVERSIBLE ERROR IN HOLDING THAT RESPONDENT MARCOPPER, PLACER DOME, INC., AND PETITIONER ARE ONE AND THE SAME ENTITY, THE SAME BEING WITHOUT FACTUAL OR LEGAL BASIS.

H. THE HONORABLE COURT OF APPEALS COMMITS A REVERSIBLE ERROR IN HOLDING PETITIONER GUILTY OF FORUM SHOPPING, IT BEING CLEAR THAT NEITHER LITIS PENDENTIA NOR RES JUDICATA MAY BAR THE INSTANT REIVINDICATORY ACTION, AND IT BEING CLEAR THAT AS THIRD-PARTY CLAIMANT, THE LAW AFFORDS PETITIONER THE RIGHT TO FILE SUCH REIVINDICATORY ACTION.

I. THE HONORABLE COURT OF APPEALS COMMITS A REVERSIBLE ERROR IN RENDERING A DECISION WHICH IN EFFECT SERVES AS JUDGMENT ON THE MERITS OF THE CASE.

J. THE SHERIFF'S LEVY AND SALE, THE SHERIFF'S CERTIFICATE OF SALE DATED OCTOBER 12, 1998, THE RTC-MANILA ORDER DATED FEBRUARY 12, 1999, AND THE RTC-BOAC ORDER DATED NOVEMBER 25, 1998 ARE NULL AND VOID.

K. THE HONORABLE COURT OF APPEALS COMMITS A REVERSIBLE ERROR IN AFFIRMING THE DENIAL BY THE RTC-BOAC OF PETITIONER'S APPLICATION FOR PRELIMINARY INJUNCTION, THE SAME BEING IN TOTAL DISREGARD OF PETITIONER'S RIGHT AS ASSIGNEE OF A PRIOR, REGISTERED MORTGAGE LIEN, AND IN DISREGARD OF THE LAW AND JURISPRUDENCE ON PREFERENCE OF CREDIT."

In its petition, petitioner alleges that it is not "doing business" in the Philippines and characterizes its participation in the assignment contracts (whereby Marcopper's assets were transferred to it) as mere isolated acts that cannot foreclose its right to sue in local courts. Petitioner likewise maintains that the two assignment contracts, although executed during the pendency of Civil Case No. 96-80083 in the RTC of Manila,

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are not fraudulent conveyances as they were supported by valuable considerations. Moreover, they were executed in connection with prior transactions that took place as early as 1992 which involved ADB, a reputable financial institution. Petitioner further claims that when it paid Marcopper's obligation to ADB, it stepped into the latter's shoes and acquired its (ADB'S) rights, titles, and interests under the "Deed of Real Estate and Chattel Mortgage." Lastly, petitioner asserts its existence as a corporation, separate and distinct from Placer Dome and Marcopper.

In its comment, Solidbank avers that: *a)* petitioner is "doing business" in the Philippines and this is evidenced by the "huge investment" it poured into the assignment contracts; *b)* granting that petitioner is not doing business in the Philippines, the nature of its transaction reveals an "intention to do business" or "to begin a series of transaction" in the country; *c)* petitioner, Marcopper and Placer Dome are one and the same entity, petitioner being then a wholly-owned subsidiary of Placer Dome, which, in turn, owns 40% of Marcopper; *d)* the timing under which the assignments contracts were executed shows that petitioner's purpose was to defeat any judgment favorable to it (Solidbank); and *e)* petitioner violated the rule on forum shopping since the object of Civil Case No. 98-13 (at RTC, Boac, Marinduque) is similar to the other cases filed by Marcopper in order to forestall the sale of the levied properties.

Marcopper, in a separate comment, states that it is merely a nominal party to the present case and that its principal concerns are being ventilated in another case.

The petition is impressed with merit.

Crucial to the outcome of this case is our resolution of the following issues: *1)* Does petitioner have the legal capacity to sue? *2)* Was the Deed of Assignment between Marcopper and petitioner executed in fraud of creditors? *3)* Are petitioner MR Holdings, Ltd., Placer Dome, and Marcopper one and the same entity? and *4)* Is petitioner guilty of forum shopping?

We shall resolve the issues *in seriatim*.

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I

The Court of Appeals ruled that petitioner has no legal capacity to sue in the Philippine courts because it is a foreign corporation doing business here without license. A review of this ruling does not pose much complexity as the principles governing a foreign corporation's right to sue in local courts have long been settled by our Corporation Law.[17] These principles may be condensed in three statements, to wit: *a)* if a foreign corporation *does business* in the Philippines *without a license*, it *cannot sue* before the Philippine courts;[18] *b)* if a foreign corporation is *not doing business* in the Philippines, it *needs no license to*

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[17] Section 133 of the Corporation Code provides:

"*SEC. 133. – Doing business without a license* — No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines x x x"

The precursor of this provision, Section 69 of Act No. 1459 (The Corporation Law) was interpreted as early as 1924 in *Marshall-Wells Co. vs. Elser & Co.*, (46 Phil. 70 [1924]) where this Court held: "The law simply means that no foreign corporation shall be permitted to transact business in the Philippine Islands x x x unless it shall have the license required by law, and, until it complies with this law, shall not be permitted to maintain any suit in the local courts." The object of the statute, the Court explained, was to subject the foreign corporation doing business in the Philippines to the jurisdiction of its courts. It was not to prevent the foreign corporation from performing single acts, but to prevent from it from acquiring a domicile for the purpose of business without taking the steps necessary to render it amenable to suit in the local courts. The implication of the Law is that it was never the purpose of the Legislature to exclude a foreign corporation which happens to obtain an isolated order for business from the Philippines, from securing redress in the Philippine Courts, and thus, in effect to permit persons to avoid their contracts made with such foreign corporations. The effect of the statute preventing foreign corporations from doing business and from bringing actions in the local courts, except on compliance with elaborate requirements, must not be unduly extended or improperly applied. It should not be construed to extend beyond the plain meaning of its terms, considered in connection with its object, and in connection with the spirit of the entire law.

[18] *Mentholatum Co., Inc., vs. Mangaliman,* 72 Phil. 524 (1941) cited in Campos, *The Corporation Code,* Volume 2, 1990 Edition, p. 498.

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sue before Philippine courts on an isolated transaction[19] or on a cause of action entirely independent of any business transaction;[20] and *c)* if a foreign corporation *does business* in the Philippines with the required license, it *can sue* before Philippine courts on any transaction. Apparently, it is not the absence of the prescribed license but the "doing (of) business" in the Philippines without such license which debars the foreign corporation from access to our courts.[21]

The task at hand requires us to weigh the facts *vis-à-vis* the established principles. The question whether or not a foreign corporation is doing business is dependent principally upon the facts and circumstances of each particular case, considered in the light of the purposes and language of the pertinent statute or statutes involved and of the general principles governing the jurisdictional authority of the state over such corporations.[22]

Batas Pambansa Blg. 68, otherwise known as "The Corporation Code of the Philippines," is silent as to what constitutes doing" or "transacting" business in the Philippines. Fortunately, jurisprudence has supplied the deficiency and has held that the term "implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and

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[19] *Eastboard Navigation, Ltd., vs. Juan Ysmael & Company, Inc.*, 102 Phil. 1 (1957); *Aetna Casualty & Surety Company vs. Pacific Star Line*, 80 SCRA 635 (1977); *Facilities Management Corp. vs. De la Osa*, 89 SCRA 131 (1979); *Bulakhidas vs. Navarro*, 142 SCRA 1 (1986).

[20] See *Dampfschieffs Rhederei Union vs. La Compania Trasatlantica*, 8 Phil. 766 (1907) and *The Swedish East Asia Co., Ltd. vs. Manila Port Service*, 25 SCRA 633 (1968).

[21] *Columbia Pictures, Inc. vs. Court of Appeals*, 261 SCRA 144 (1996).

[22] 36 Am Jur 2d § 317 citing *Sullivan vs. Sullivan Timber Co.* 103 Ala 371, 15 So 941, *Thurman vs. Chicago, M & St. P.R. Co.*, 254 Mass 569, 151 NE 63, 46 ALR 563; *Hall vs. Wilder Mfg. Co.*, 316 Mo. 812, 293 SW 760, 52 ALR 723.

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object for which the corporation was organized."[23] In *Mentholatum Co. Inc., vs. Mangaliman*,[24] this Court laid down the test to determine whether a foreign company is "doing business," thus:

"x x x *The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another.* (*Traction Cos. vs. Collectors of Int. Revenue* [C.C.A., Ohio], 223 F. 984,987.) x x x."

The traditional case law definition has metamorphosed into a statutory definition, having been adopted with some qualifications in various pieces of legislation in our jurisdiction. For instance, Republic Act No. 7042, otherwise known as the "Foreign Investment Act of 1991," defines "doing business" as follows:

"*d)* The phrase 'doing business' shall include soliciting orders, service contracts, opening offices, whether called 'liaison' offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eight(y) (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity, or corporation in the Philippines; *and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works; or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business*

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[23] *Columbia Pictures, Inc. vs. Court of Appeals, supra.* As a general proposition upon which many authorities agree in principle, subject to such modifications as may be necessary in view of the particular issue or of the terms of the statute involved, it is recognized that a foreign corporation is "doing," "transacting," "engaging in," or "carrying on" business in the State when, and ordinarily only when, it has entered the State by its agents and is there engaged in carrying on and transacting through them some substantial part of its ordinary or customary business, usually continuous in the sense that it may be distinguished from merely casual, sporadic, or occasional transactions and isolated acts.

[24] *Supra.*

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organization; Provided, however, That the phrase 'doing business' shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor, nor having a nominee director or officer to represent its interests in such corporation, nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account." (Italics supplied)[25]

Likewise, Section 1 of Republic Act No. 5455,[26] provides that:

"*SECTION. 1. Definition and scope of this Act.* — (1) x x x the phrase 'doing business' shall include soliciting orders, purchases, service contracts, opening offices, whether called 'liaison' offices or branches; appointing representatives or distributors who are domiciled in the Philippines or who in any calendar year stay in the Philippines for a period or periods totaling one hundred eighty days or more; participating in the management, supervision or control of any domestic business firm, entity or corporation in the Philippines; and *any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization.*"

There are other statutes[27] defining the term "doing business" in the same tenor as those above-quoted, and as may be observed,

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[25] 87 O.G. No. 31, p. 4420.

[26] An Act to Require that the Making of Investments and the Doing of Business Within the Philippines by Foreigners or Business Organizations Owned in Whole or in Part by Foreigners Should Contribute to the Sound and Balanced Development of the National Economy on a Self-Sustaining Basis, and for Other Purposes, Enacted Without executive approval, September 30, 1968 (65 O.G. No. 29, p. 7410).

[27] Article 65 of Presidential Decree No. 1789 ("A Decree to Revise, Amend, and Codify the Investment, Agricultural and Export Incentives Acts to be Known as the Omnibus Investment Code"), which took effect on January 16, 1981, defines "doing business" to include soliciting orders, purchases, service contracts, opening offices, whether called "liaison" offices or branches; appointing

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one common denominator among them all is the concept of "continuity."

In the case at bar, the Court of Appeals categorized as "doing business" petitioner's participation under the "Assignment Agreement" and the "Deed of Assignment." This is simply untenable. The expression "doing business" should not be given such a strict and literal construction as to make it apply to any corporate dealing whatever.[28] At this early stage and with petitioner's acts or transactions limited to the assignment contracts, it cannot be said that it had performed acts intended to continue the business for which it was organized. *It may not be amiss to point out that the purpose or business for which petitioner was organized is not discernible in the records. No effort was exerted by the Court of Appeals to establish the nexus between petitioner's business and the acts supposed to constitute "doing business." Thus, whether the assignment contracts were incidental to petitioner's business or were continuation thereof is beyond determination.* We cannot apply the case cited by the Court of Appeals, *Far East Int'l Import and Export Corp. vs. Nankai Kogyo Co., Ltd.*,[29] which held that a single act may still constitute "doing business" if "it is not merely incidental or casual, but is of such character as distinctly to indicate a purpose on the part of the foreign corporation to do other business in the state." In said case, there was an express admission from

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representatives or distributors who are domiciled in the Philippines or who in any calendar year stay in the Philippines for a period or periods totaling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business firm, entity or corporation in the Philippines, and *any other act or acts that imply a continuity of commercial dealings or arrangements and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of , commercial gain or of the purpose and object of the business organization.*

See also Article 44 of the Omnibus Investments Code of 1987 (Executive Order No. 226, effective July 16, 1987).

[28] 36 Am Jur 2d § 317 citing *John Deere Plow Co. vs. Wyland*, 69 Kan 255, 76 P 863; *Penn Collieries Co. vs. McKeever*, 183 NY 98, 75 NE 935; *Crites vs. Associated Frozen Food Packers*, 183 Or 191, 191 P2d 650.

[29] 6 SCRA 725 (1962).

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an official of the foreign corporation that he was sent to the Philippines to look into the operation of mines, thereby revealing the foreign corporation's desire to continue engaging in business here. But in the case at bar, there is no evidence of similar desire or intent. Unarguably, petitioner may, *as the Court of Appeals suggested,* decide to operate Marcopper's mining business, but, of course, at this stage, that is a mere speculation. Or it may decide to sell the credit secured by the mining properties to an offshore investor, in which case the acts will still be isolated transactions. *To see through the present facts an intention on the part of petitioner to start a series of business transaction is to rest on assumptions or probabilities falling short of actual proof. Courts should never base its judgments on a state of facts so inadequately developed that it cannot be determined where inference ends and conjecture begins.*

Indeed, the Court of Appeals' holding that petitioner was determined to be "doing business" in the Philippines is based mainly on conjectures and speculation. In concluding that the "*unmistakable intention*" of petitioner is to continue Marcopper's business, the Court of Appeals hangs on the wobbly premise that "there is no other way for petitioner to recover its huge financial investments which it poured into Marcopper's rehabilitation without it (petitioner) continuing Marcopper's business in the country."[30] This is a mere presumption. Absent overt acts of petitioner from which we may directly infer its intention to continue Marcopper's business, we cannot give our concurrence. Significantly, a view subscribed upon by many authorities is that the mere ownership by a foreign corporation of a property in a certain state, *unaccompanied by its active use in furtherance of the business for which it was formed*, is insufficient in itself to constitute doing business.[31] In *Chittim*

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[30] Decision of the Court of Appeals, p. 9.

[31] 36 Am Jur § 340 citing *Caledonian Coal Co. vs. Baker*, 196 US 432, 49 Led 540. The mere ownership of property within a state, without more, would not be sufficient for purposes of jurisdiction or process under the "minimum contact" doctrine of the *International Shoe Company vs. Washington Case* (326 US 310, 90 Led 95, 66 S Ct 154, 161 ALR 1057.

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vs. Belle Fourche Bentonite Products Co.,[32] it was held that *even if a foreign corporation purchased and took conveyances of a mining claim, did some assessment work thereon, and endeavored to sell it, its acts will not constitute the doing of business so as to subject the corporation to the statutory requirements for the transacting of business.* On the same vein, petitioner, a foreign corporation, which becomes the assignee of mining properties, facilities and equipment cannot be automatically considered as doing business, nor presumed to have the intention of engaging in mining business.

One important point. Long before petitioner assumed Marcopper's debt to ADB and became their assignee under the two assignment contracts, there already existed a "Support and Standby Credit Agreement" between ADB and Placer Dome whereby the latter bound itself to provide cash flow support for Marcopper's payment of its obligations to ADB. Plainly, petitioner's payment of US$ 18,453, 450.12 to ADB was more of a fulfillment of an obligation under the "Support and Standby Credit Agreement" rather than an investment. That petitioner had to step into the shoes of ADB as Marcopper's creditor was just a necessary legal consequence of the transactions that transpired. Also, we must hasten to add that the "Support and Standby Credit Agreement" was executed *four (4) years prior to Marcopper's insovency,* hence, the alleged "*intention of petitioner to continue Marcopper's business*" could have no basis for at that time, Marcopper's fate cannot yet be determined.

In the final analysis, we are convinced that petitioner was engaged only in isolated acts or transactions. Single or isolated acts, contracts, or transactions of foreign corporations are not regarded as a doing or carrying on of business. Typical examples of these are the making of a single contract, sale, sale with the taking of a note and mortgage in the state to secure payment therefor, purchase, or note, or the mere commission of a tort.[33]

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[32] 60 Wyo 235, 149 P2d 142.

[33] 36 Am Jur 2d § 332 citing *Schillinger Bros. Co. vs. Henderson Brewing Co.* 107 Ill App 335; *Pitzer vs. Stifel, N. & Co.* 143 Neb 394, 9 NW 2d 495; *Delaware & H. Canal Co. vs. Mahlenbrock,* 63 NJL 281, 43 A 978; *Cooper*

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In these instances, there is *no purpose* to do any other business within the country.

II

Solidbank contends that from the chronology and timing of events, it is evident that there existed a pre-set pattern of response on the part of Marcopper to defeat whatever court ruling that may be rendered in favor of Solidbank.

We are not convinced.

While it may appear, at initial glance, that the assignment contracts are in the nature of fraudulent conveyances, however, a closer look at the events that transpired prior to the execution of those contracts gives rise to a different conclusion. The obvious flaw in the Court of Appeals' Decision lies in its constricted view of the facts obtaining in the case. In its factual narration, the Court of Appeals definitely left out some events. We shall see later the significance of those events.

Article 1387 of the Civil Code of the Philippines provides:

"*Art. 1387.* All contracts by virtue of which the debtor alienates property by gratuitous title are presumed to have been entered into in fraud of creditors, when the donor did not reserve sufficient property to pay all debts contracted before the donation.

Alienations by onerous title are also presumed fraudulent when made by persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued. The decision or attachment need not refer to the property alienated, and need not have been obtained by the party seeking rescission.

In addition to these presumptions, the design to defraud creditors may be proved in any other manner recognized by law and of evidence.

This article presumes the existence of fraud made by a debtor. Thus, in the absence of satisfactory evidence to the contrary, an alienation of a property will be held fraudulent if it is made

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vs. Ferguson, 113 US 727, 28 L ed 1137, 5 S Ct 739; *Commercial Bank vs. Sherman*, 28 Or 573, 43 P 658; *Martin vs. Fischbach Trucking Co.* 183 f2d 53.

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after a judgment has been rendered against the debtor making the alienation.[34] This presumption of fraud is not conclusive and may be rebutted by satisfactory and convincing evidence. *All that is necessary is to establish affirmatively that the conveyance is made in good faith and for a sufficient and valuable consideration.*[35]

The "Assignment Agreement" and the "Deed of Assignment" were executed for valuable considerations. Patent from the "Assignment Agreement" is the fact that petitioner assumed the payment of US$ 18,453,450.12 to ADB in satisfaction of Marcopper's remaining debt as of March 20, 1997.[36] Solidbank cannot deny this fact considering that a substantial portion of the said payment, in the sum of US$ 13,886,791.06, was remitted in favor of the Bank of Nova Scotia, its major stockholder.[37]

The facts of the case so far show that the assignment contracts were executed in good faith. The execution of the "Assignment Agreement" on Macrh 20, 1997 and the "Deed of Assignment" on December 8,1997 is not the *alpha* of this case. While the execution of these assignment contracts almost coincided with the rendition on May 7, 1997 of the Partial Judgment in Civil Case No. 96-80083 by the Manila RTC, however, there was no intention on the part of petitioner to defeat Solidbank's claim. It bears reiterating that as early as November 4, 1992, Placer Dome had already bound itself under a "Support and Standby Credit Agreement" to provide Marcopper with cash flow support for the payment to ADB of its obligations. When Marcopper ceased operations on account of disastrous mine tailings spill into the Boac River and ADB pressed for payment of the loan, Placer Dome agreed to have its subsidiary, herein petitioner, paid ADB the amount of US $18,453,450.12. Thereupon, ADB and Marcopper executed, respectively, in favor of petitioner an

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[34] Tolentino, *Civil Code of the Philippines*, Vol. IV, 1997 Reprinting, p. 591. See also *Oria vs. Mcmicking*, 21 Phil. 243 (1912).

[35] *Ibid.*.

[36] *Rollo*, pp. 162-163.

[37] *Rollo*, p. 393.

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"Assignment Agreement" and a "Deed of Assignment." Obviously, the assignment contracts were connected with transactions that happened long before the rendition in 1997 of the Partial Judgment in Civil Case No. 96-80083 by the Manila RTC. Those contracts cannot be viewed in isolation. If we may add, it is highly inconceivable that ADB, a reputable international financial organization, will connive with Marcopper to feign or simulate a contract in 1992 just to defraud Solidbank for its claim four years thereafter. And it is equally incredible for petitioner to be paying the huge sum of US $ 18, 453, 450.12 to ADB only for the purpose of defrauding Solidbank of the sum of ₱52,970,756.89.

It is said that the test as to whether or not a conveyance is fraudulent is — does it prejudice the rights of creditors?[38] We cannot see how Solidbank's right was prejudiced by the assignment contracts considering that substantially all of Marcopper's properties were already covered by the registered "Deed of Real Estate and Chattel Mortgage" executed by Marcopper in favor of ADB as early as November 11, 1992. As such, Solidbank cannot assert a better right than ADB, the latter being a preferred creditor. It is basic that mortgaged properties answer primarily for the mortgaged credit, not for the judgment credit of the mortgagor's unsecured creditor. Considering that petitioner assumed Marcopper's debt to ADB, it follows that Solidbank's right as judgment creditor over the subject properties must give way to that of the former.

III

The record is lacking in circumstances that would suggest that petitioner corporation, Placer Dome and Marcopper are one and the same entity. While admittedly, petitioner is a wholly-owned subsidiary of Placer Dome, which, in turn, was then a minority stockholder of Marcopper, however, *the mere fact that a corporation owns all of the stocks of another corporation, taken alone is not sufficient to justify their being treated as one entity.* If used to perform legitimate functions, a subsidiary's

[38] *Oria vs. Mcmicking, supra.*

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separate existence shall be respected, and the liability of the parent corporation as well as the subsidiary will be confined to those arising in their respective business.[39]

The recent case of *Philippine National Bank vs. Ritratto Group Inc.,*[40] outlines the circumstances which are useful in the determination of whether a subsidiary is but a mere instrumentality of the parent-corporation, to wit:

(a) The parent corporation owns all or most of the capital stock of the subsidiary.

(b) The parent and subsidiary corporations have common directors or officers.

(c) The parent corporation finances the subsidiary.

(d) The parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation.

(e) The subsidiary has grossly inadequate capital.

(f) The parent corporation pays the salaries and other expenses or losses of the subsidiary.

(g) The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to or by the parent corporation.

(h) In the papers of the parent corporation or in the statements of its officers, the subsidiary is described as a department or division of the parent corporation, or its business or financial responsibility is referred to as the parent corporation's own.

(i) The parent corporation uses the property of the subsidiary as its own.

(j) The directors or executives of the subsidiary do not act independently in the interest of the subsidiary, but take their orders from the parent corporation.

(k) The formal legal requirements of the subsidiary are not observed.

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[39] *Philippine National Bank vs. Rittrato Group Inc.*, G.R. No. 142616, July 31, 2001.

[40] *Supra.*citing *Garrett vs. Southern Railway Co.*, 173 F. Supp. 915, E.D. Tenn. (1959).

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In this catena of circumstances, what is only extant in the records is the matter of stock ownership. There are no other factors indicative that petitioner is a mere instrumentality of Marcopper or Placer Dome. The mere fact that Placer Dome agreed, under the terms of the "Support and Standby Credit Agreement" to provide Marcopper with cash flow support in paying its obligations to ADB, does not mean that its personality has merged with that of Marcopper. This singular undertaking, performed by Placer Dome with its own stockholders in Canada and elsewhere, is not a sufficient ground to merge its corporate personality with Marcopper which has its own set of shareholders, dominated mostly by Filipino citizens. The same view applies to petitioner's payment of Marcopper's remaining debt to ADB.

With the foregoing considerations and the absence of fraud in the transaction of the three foreign corporations, we find it improper to pierce the veil of corporate fiction – that equitable doctrine developed to address situations where the corporate personality of a corporation is abused or used for wrongful purposes.

IV

On the issue of forum shopping, there could have been a violation of the rules thereon if petitioner and Marcopper were indeed one and the same entity. But since petitioner has a separate personality, it has the right to pursue its third-party claim by filing the independent reinvindicatory action with the RTC of Boac, Marinduque, pursuant to Rule 39, Section 16 of the 1997 Rules of Civil Procedures. This remedy has been recognized in a long line of cases decided by this Court.[41] In *Rodriguez vs. Court of Appeals*,[42] we held:

". . . It has long been settled in this jurisdiction that the claim of ownership of a third party over properties levied for execution of

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[41] *Polaris Marketing Corporation vs. Plan*, 69 SCRA 93 (1976); *Bayer Philippines vs. Agana*, 63 SCRA 355 (1975); *Lorenzana vs. Cayetano*, 78 SCRA 485 (1977); *Abiera vs. Court of Appeals*, 45 SCRA 314 (972).

[42] 261 SCRA 423 (1996).

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a judgment presents no issue for determination by the court issuing the writ of execution.

. . .Thus, when a property levied upon by the sheriff pursuant to a writ of execution is claimed by third person in a sworn statement of ownership thereof, as prescribed by the rules, *an entirely different matter calling for a new adjudication arises.* And dealing as it does with the all important question of title, it is reasonable to require the filing of proper pleadings and the holding of a trial on the matter in view of the requirements of due process.

. . . In other words, construing Section 17 of Rule 39 of the Revised Rules of Court (now Section 16 of the 1997 Rules of Civil Procedure), the rights of third-party claimants over certain properties levied upon by the sheriff to satisfy the judgment may not be taken up in the case where such claims are presented but in a separate and independent action instituted by the claimants." (Italics supplied)

This "reinvindicatory action" has for its object the recovery of ownership or possession of the property seized by the sheriff, despite the third party claim, as well as damages resulting therefrom, and it may be brought against the sheriff and such other parties as may be alleged to have connived with him in the supposedly wrongful execution proceedings, such as the judgment creditor himself. *Such action is an entirely separate and distinct action from that in which execution has been issued.* Thus, there being no identity of parties and cause of action between Civil Case No. 98-13 (RTC, Boac) and those cases filed by Marcopper, including Civil Case No. 96-80083 (RTC, Manila) as to give rise to *res judicata* or *litis pendentia*, Solidbank's allegation of forum-shopping cannot prosper:[43]

All considered, we find petitioner to be entitled to the issuance of a writ of preliminary injunction. Section 3, Rule 58 of the 1997 Rules of Civil Procedure provides:

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[43] The test in determining the presence of forum-shopping is whether in the two (or more cases) pending, there is identity of *a)* parties, *b)* rights or causes of action and *c)* reliefs sought. (*Employees' Compensation Commission vs. Court of Appeals*, G.R. No. 115858, June 28, 1996.

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"*SEC. 3 Grounds for issuance of preliminary injunction.* – A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the acts or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual."

Petitioner's right to stop the further execution of the properties covered by the assignment contracts is clear under the facts so far established. An execution can be issued only against a party and not against one who did not have his day in court.[44] The duty of the sheriff is to levy the property of the judgment debtor not that of a third person. For, as the saying goes, one man's goods shall not be sold for another man's debts.[45] To allow the execution of petitioner's properties would surely work injustice to it and render the judgment on the reinvindicatory action, should it be favorable, ineffectual. In *Arabay, Inc., vs. Salvador*,[46] this Court held that an injunction is a proper remedy to prevent a sheriff from selling the property of one person for the purpose of paying the debts of another; and that while the general rule is that no court has authority to interfere by injunction with the judgments or decrees of another court of equal or concurrent or coordinate jurisdiction, however, it is not so when a third-

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[44] *Vda. De Medina vs. Cruz*, 161 SCRA 36 (1988).

[45] *Estonina vs. Court of Appeals*, 266 SCRA 627 (1997).

[46] 82 SCRA 138 (1978) cited in Herrera, *Remedial Law*, Vol. III, 1996 Revised Edition, pp. 53-54. See also *Polaris Marketing Corporation vs. Plan*, *supra*

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party claimant is involved. We quote the instructive words of Justice Querube C. Makalintal in *Abiera vs. Court of Appeals*,[47] thus:

"The rationale of the decision in the Herald Publishing Company case[48] is peculiarly applicable to the one before Us, and removes it from the general doctrine enunciated in the decisions cited by the respondents and quoted earlier herein.

1. Under Section 17 of Rule 39 a third person who claims property levied upon on execution may vindicate such claim by action. Obviously a judgment rendered in his favor, that is, declaring him to be the owner of the property, would not constitute interference with the powers or processes of the court which rendered the judgment to enforce which the execution was levied. *If that be so – and it is so because the property, being that of a stranger, is not subject to levy – then an interlocutory order such as injunction, upon a claim and prima facie showing of ownership by the claimant, cannot be considered as such interference either."*

WHEREFORE, the petition is *GRANTED*. The assailed Decision dated January 8, 1999 and the Resolution dated March 29, 1999 of the Court of Appeals in CA G.R. No. 49226 are set aside. Upon filing of a bond of ₱1,000,000.00, respondent sheriffs are restrained from further implementing the writ of execution issued in Civil Case No. 96-80083 by the RTC, Branch 26, Manila, until further orders from this Court. The RTC, Branch 94, Boac, Marinduque, is directed to dispose of Civil Case No. 98-13 with dispatch.

SO ORDERED.

Melo (Chairman), Vitug, Panganiban, and *Carpio, JJ.*, concur.

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[47] 45 SCRA 314 (1972), cited in Laureta, *Commentaries and Jurisprudence on Injunction*, 1989 Ed., pp. 345 355.

[48] *Manila Herald Publishing Co., Inc. vs. Ramos*, 88 Phil. 94 (1951).