Supreme Court E-Library

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

THIRD DIVISION

[G.R. No. 195580. April 21, 2014]

NARRA NICKEL MINING AND DEVELOPMENT CORP., TESORO MINING AND DEVELOPMENT, INC., and MCARTHUR MINING, INC., *petitioners, vs.* **REDMONT CONSOLIDATED MINES CORP.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC; INSTANCES WHERE THE COURTS CAN DECIDE AN OTHERWISE MOOT AND ACADEMIC CASE.— Basically, a case is said to be moot and/or academic when it "ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value." Thus, the courts "generally decline jurisdiction over the case or dismiss it on the ground of mootness." The "mootness" principle, however, does accept certain exceptions and the mere raising of an issue of "mootness" will not deter the courts from trying a case when there is a valid reason to do so. In *David v. Macapagal-Arroyo* (*David*), the Court provided four instances where courts can decide an otherwise moot case, thus: 1.) There is a grave violation of the Constitution; 2.) The exceptional character of the situation and paramount public interest is involved; 3.) When constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and 4.) The case is capable of repetition yet evading review.

2. ID.; ID.; ID.; ID.; EXCEPTIONS, PRESENT IN CASE AT BAR.— All of the exceptions stated above are present in the instant

Supreme Court E-Library

case. We[,] of this Court[,] note that a grave violation of the Constitution, specifically Section 2 of Article XII, is being committed by a foreign corporation right under our country's nose through a myriad of corporate layering under different, allegedly, Filipino corporations. The intricate corporate layering utilized by the Canadian company, MBMI, is of exceptional character and involves paramount public interest since it undeniably affects the exploitation of our Country's natural resources. The corresponding actions of petitioners during the lifetime and existence of the instant case raise questions as [to] what principle is to be applied to cases with similar issues. No definite ruling on such principle has been pronounced by the Court; hence, the disposition of the issues or errors in the instant case will serve as a guide "to the bench, the bar and the public." Finally, the instant case is capable of repetition yet evading review, since the Canadian company, MBMI, can keep on utilizing dummy Filipino corporations through various schemes of corporate layering and conversion of applications to skirt the constitutional prohibition against foreign mining in Philippine soil.

3. COMMERCIAL LAW; CORPORATIONS; TWO TESTS IN DETERMINING THE NATIONALITY OF A CORPORATION.— Basically, there are two acknowledged tests in determining the nationality of a corporation: the control test and the grandfather rule. Paragraph 7 of DOJ Opinion No. 020, Series of 2005, adopting the 1967 SEC Rules which implemented the requirement of the Constitution and other laws pertaining to the controlling interests in enterprises engaged in the exploitation of natural resources owned by Filipino citizens, provides: Shares belonging to corporations or partnerships at least 60% of the capital of which is owned by Filipino citizens shall be considered as of Philippine nationality, but if the percentage of Filipino ownership in the corporation or partnership is less than 60%, only the number of shares corresponding to such percentage shall be counted as of Philippine nationality. Thus, if 100,000 shares are registered in the name of a corporation or partnership at least 60% of the capital stock or capital, respectively, of which belong to Filipino citizens, all of the shares shall be recorded as owned by Filipinos. But if less than 60%, or say, 50% of the capital stock or capital of the corporation or partnership, respectively, belongs to Filipino citizens, only 50,000 shares

Supreme Court E-Library

shall be counted as owned by Filipinos and the other 50,000 shall be recorded as belonging to aliens. The first part of paragraph 7, DOJ Opinion No. 020, stating "shares belonging to corporations or partnerships at least 60% of the capital of which is owned by Filipino citizens shall be considered as of Philippine nationality," pertains to the control test or the liberal rule. On the other hand, the second part of the DOJ Opinion which provides, "if the percentage of the Filipino ownership in the corporation or partnership is less than 60%, only the number of shares corresponding to such percentage shall be counted as Philippine nationality," pertains to the stricter, more stringent grandfather rule.

4. ID.; ID.; ID.; THE COURT FINDS THAT THE GRANDFATHER RULE MUST BE USED TO DETERMINE THE NATIONALITY OF PETITIONER CORPORATIONS.— After a scrutiny of the evidence extant on record, the Court finds that this case calls for the application of the grandfather rule since, as ruled by the POA and affirmed by the OP, doubt prevails and persists in the corporate ownership of petitioners. Also, as found by the CA, doubt is present in the 60-40 Filipino equity ownership of petitioners Narra, McArthur and Tesoro, since their common investor, the 100% Canadian corporation—MBMI, funded them. However, petitioners also claim that there is "doubt" only when the stockholdings of Filipinos are less than 60%. The assertion of petitioners that "doubt" only exists when the stockholdings are less than 60% fails to convince this Court. DOJ Opinion No. 20, which petitioners quoted in their petition, only made an example of an instance where "doubt" as to the ownership of the corporation exists. It would be ludicrous to limit the application of the said word only to the instances where the stockholdings of non-Filipino stockholders are more than 40% of the total stockholdings in a corporation. The corporations interested in circumventing our laws would clearly strive to have "60% Filipino Ownership" at face value. It would be senseless for these applying corporations to state in their respective articles of incorporation that they have less than 60% Filipino stockholders since the applications will be denied instantly. Thus, various corporate schemes and layerings are utilized to circumvent the application of the Constitution. Obviously, the instant case presents a situation which exhibits a scheme employed by stockholders to circumvent the law, creating a cloud of doubt in the Court's mind. To determine,

Supreme Court E-Library

therefore, the actual participation, direct or indirect, of MBMI, the grandfather rule must be used.

5. ID.; ID.; ID.; ID.; PETITIONERS NARRA, TESORO, AND McARTHUR ARE NOT FILIPINO CORPORATIONS.— [I]t is quite safe to say that petitioners McArthur, Tesoro and Narra are not Filipino since MBMI, a 100% Canadian corporation, owns 60% or more of their equity interests. Such conclusion is derived from grandfathering petitioners' corporate owners, namely: MMI, SMMI and PLMDC. Going further and adding to the picture, MBMI's *Summary of Significant Accounting Policies* statement—regarding the "joint venture" agreements that it entered into with the "Olympic" and "Alpha" groups––involves SMMI, Tesoro, PLMDC and Narra. Noticeably, the ownership of the "layered" corporations boils down to MBMI, Olympic or corporations under the "Alpha" group wherein MBMI has joint venture agreements with, practically exercising majority control over the corporations mentioned. In effect, whether looking at the capital structure or the underlying relationships between and among the corporations, petitioners are NOT Filipino nationals and must be considered foreign since 60% or more of their capital stocks or equity interests are owned by MBMI.

6. ID.; ID.; PARTNERSHIP AND JOINT VENTURE AGREEMENT, DEFINED AND DISTINGUISHED.— A partnership is defined as two or more persons who bind themselves to contribute money, property, or industry to a common fund with the intention of dividing the profits among themselves. On the other hand, joint ventures have been deemed to be "akin" to partnerships since it is difficult to distinguish between joint ventures and partnerships. Thus: [T]he relations of the parties to a joint venture and the nature of their association are so similar and closely akin to a partnership that it is ordinarily held that their rights, duties, and liabilities are to be tested by rules which are closely analogous to and substantially the same, if not exactly the same, as those which govern partnership. In fact, it has been said that the trend in the law has been to blur the distinctions between a partnership and a joint venture, very little law being found applicable to one that does not apply to the other. Though some claim that partnerships and joint ventures are totally different animals, there are very few rules that differentiate one from the other; thus, joint ventures are

Supreme Court E-Library

deemed "akin" or similar to a partnership. In fact, in joint venture agreements, rules and legal incidents governing partnerships are applied.

7. ID.; ID.; ID.; WHERE THE PARTIES ENTERED INTO AN INTRICATE WEB OF VENTURES TO CIRCUMVENT THE PROHIBITION AGAINST CORPORATIONS ENTERING INTO A PARTNERSHIP, THE RELATIONSHIP CREATED THEREIN SHALL BE DEEMED AS "PARTNERSHIPS".— Accordingly, culled from the incidents and records of this case, it can be assumed that the relationships entered between and among petitioners and MBMI are no simple "joint venture agreements." As a rule, corporations are prohibited from entering into partnership agreements; consequently, corporations enter into joint venture agreements with other corporations or partnerships for certain transactions in order to form "pseudo partnerships." Obviously, as the intricate web of "ventures" entered into by and among petitioners and MBMI was executed to circumvent the legal prohibition against corporations entering into partnerships, then the relationship created should be deemed as "partnerships," and the laws on partnership should be applied. Thus, a joint venture agreement between and among corporations may be seen as similar to partnerships since the elements of partnership are present.

8. REMEDIAL LAW; EVIDENCE; *RES INTER ALIOS ACTA* RULE, APPLIED; WHERE THE RELATIONSHIPS FOUND BETWEEN CORPORATIONS ARE CONSIDERED PARTNERSHIPS, THE RULE ON ADMISSION BY A CO-PARTNER UNDER SECTION 29, RULE 130 OF THE RULES OF COURT APPLIES.— Considering that the relationships found between petitioners and MBMI are considered to be partnerships, then the CA is justified in applying Sec. 29, Rule 130 of the Rules by stating that "by entering into a joint venture, MBMI have a joint interest" with Narra, Tesoro and McArthur.

9. POLITICAL LAW; ADMINISTRATIVE LAW; PHILIPPINE MINING ACT OF 1995 (RA 7942); JURISDICTION OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES PANEL OF ARBITRATORS UNDER SECTION 77 OF RA 7942, AFFIRMED.— We affirm the ruling of the CA in declaring that the POA has jurisdiction over the instant case. The POA has jurisdiction to settle disputes over rights to mining areas which definitely involve the petitions filed by

Supreme Court E-Library

Redmont against petitioners Narra, McArthur and Tesoro. Redmont, by filing its petition against petitioners, is asserting the right of Filipinos over mining areas in the Philippines against alleged foreign-owned mining corporations. Such claim constitutes a "dispute" found in Sec. 77 of RA 7942[.] x x x [A]s we enunciated in *Celestial*, the POA unquestionably has jurisdiction to resolve disputes over MPSA applications subject of Redmont's petitions. However, said jurisdiction does not include either the approval or rejection of the MPSA applications, which is vested only upon the Secretary of the DENR. Thus, the finding of the POA, with respect to the rejection of petitioners' MPSA applications being that they are foreign corporation, is valid. x x x It is basic that the jurisdiction of the court is determined by the statute in force at the time of the commencement of the action. x x x It is clear [Under Section 77 of RA 7942] that POA has exclusive and original jurisdiction over any and all disputes involving rights to mining areas. One such dispute is an MPSA application to which an adverse claim, protest or opposition is filed by another interested applicant. In the case at bar, the dispute arose or originated from MPSA applications where petitioners are asserting their rights to mining areas subject of their respective MPSA applications. Since respondent filed 3 separate petitions for the denial of said applications, then a controversy has developed between the parties and it is POA's jurisdiction to resolve said disputes. Moreover, the jurisdiction of the RTC involves civil actions while what petitioners filed with the DENR Regional Office or any concerned DENRE or CENRO are MPSA applications. Thus POA has jurisdiction. Furthermore, the POA has jurisdiction over the MPSA applications under the doctrine of primary jurisdiction.

10. COMMERCIAL LAW; CORPORATIONS; TWO TESTS IN DETERMINING THE NATIONALITY OF A CORPORATION; CONTROL TEST AND GRANDFATHER RULE, WHEN APPLICABLE.— [T]he "control test" is still the prevailing mode of determining whether or not a corporation is a Filipino corporation, within the ambit of Sec. 2, Art. II of the 1987 Constitution, entitled to undertake the exploration, development and utilization of the natural resources of the Philippines. When in the mind of the Court there is doubt, based on the attendant facts and circumstances of the case, in the 60-40 Filipino-equity ownership in the corporation, then it may apply the "grandfather rule."

Supreme Court E-Library

LEONEN, *J., dissenting opinion:*

1. POLITICAL LAW; ADMINISTRATIVE LAW; PHILIPPINE MINING ACT OF 1995 (RA 7942); THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) PANEL OF ARBITRATORS HAS NO COMPETENCE TO DETERMINE THE QUALIFICATIONS OF THE PETITIONERS CORPORATIONS TO HOLD MINING AGREEMENTS; THE ISSUES IN CASE AT BAR RELATE TO JUDICIAL QUESTIONS OF WHETHER PETITIONER CORPORATIONS ARE PHILIPPINE NATIONALS AND NOT TO MINING DISPUTES.— The DENR Panel of Arbitrators does not have the competence to rule on the issue of whether the ownership of the capital of the corporations Narra, Tesoro, and McArthur meet the constitutional and statutory requirements. This alone is ample basis for granting the petition. x x x As has been repeatedly acknowledged by the *ponencia*, the Court of Appeals, and the Mines Adjudication Board, the present case, and the petitions filed by Redmont before the DENR Panel of Arbitrators boil down to the "pivotal issue x x x [of] whether or not [Narra, Tesoro, and McArthur] are Philippine nationals." This is a matter that entails a consideration of the law. It is a question that relates to the status of Narra, Tesoro, and McArthur and the legal rights (or inhibitions) accruing to them on account of their status. This does not entail a consideration of the specifications of mining arrangements and operations. Thus, the petitions filed by Redmont before the DENR Panel of Arbitrators relate to judicial questions and not to mining disputes. They relate to matters which are beyond the jurisdiction of the Panel of Arbitrators. Furthermore nowhere in Section 77 of the Republic Act No. 7942 is there a grant of jurisdiction to the Panel of Arbitrators over the determination of the qualification of applicants. The Philippine Mining Act clearly requires the existence of a "dispute" over a mining area, a mining agreement, with a surface owner, or those pending with the Bureau or the Department upon the law's promulgation. The existence of a "dispute" presupposes that the party bringing the suit has a colorable or putative claim more superior than that of the respondent in the arbitration proceedings. After all, the Panel of Arbitrators is supposed to provide binding

Supreme Court E-Library

arbitration which should result in a binding award either in favor of the petitioner or the respondent. Thus, the Panel of Arbitrators is a qualified quasi-judicial agency. It does not perform all judicial functions in lieu of courts of law. The petition brought by respondent before the Panel of Arbitrators *a quo* could not have resulted in any kind of award in its favor. It was asking for a judicial declaration at first instance of the qualification of the petitioners to hold mining agreements in accordance with the law. This clearly was beyond the jurisdiction of the Panel of Arbitrators and eventually also of the Mines Adjudication Board (MAB).

2. ID.; ID.; ID.; RATIONALE FOR NATIONALIZING MINING ACTIVITY, REITERATED.— The rationale for nationalizing the exploration, development, and utilization of natural resources was explained by this court in *Register of Deeds of Rizal v. Ung Siu Si Temple* as follows: **The purpose of the sixty per centum requirement is obviously to ensure that corporations** or associations **allowed** to acquire agricultural land or **to exploit natural resources shall be controlled by Filipinos**; and the spirit of the Constitution demands that in the absence of capital stock, the controlling membership should be composed of Filipino citizens. On point are Dean Vicente Sinco's words, cited with approval by this court in *Republic v. Quasha*: x x x **With our natural resources, our sources of power and energy, our public lands, and our public utilities, the material basis of the nation's existence, in the hands of aliens over whom the Philippine Government does not have complete control, the Filipinos may soon find themselves deprived of their patrimony and living as it were, in a house that no longer belongs to them**. Article XII, Section 2 of the 1987 Constitution ensures the effectivity of the broad economic policy, spelled out in Article II, Section 19 of the 1987 Constitution, of "a self-reliant and independent national economy *effectively controlled* by Filipinos" and the collective aspiration articulated in the 1987 Constitution's Preamble of "conserv[ing] and develop[ing] our patrimony."

3. ID.; ID.; ID.; STANDARDS FOR RECKONING FOREIGN EQUITY PARTICIPATION IN NATIONALIZED ECONOMIC ACTIVITIES; APPLICABILITY OF CONTROL TEST AND GRANDFATHER RULE, ELABORATED.— The broad and long-standing nationalization of certain sectors and industries notwithstanding, an apparent confusion has persisted as to

Supreme Court E-Library

how foreign equity holdings in a corporation engaged in a nationalized economic activity shall be reckoned. As have been proffered by the myriad cast of parties and adjudicative bodies involved in this case, there have been two means: the Control Test and the Grandfather Rule. Paragraph 7 of the 1967 Rules of the Securities and Exchange Commission, dated February 28, 1967, states: Shares belonging to corporations or partnerships at least 60% of the capital of which is owned by Filipino citizens shall be considered as of Philippine nationality, but if the percentage of Filipino ownership in the corporation or partnership is less than 60%, only the number of shares corresponding to such percentage shall be counted as of Philippine nationality. x x x Department of Justice (DOJ) Opinion No. 20, series of 2005, explains that the 1967 SEC Rules provide for the Control Test and the Grandfather Rule as the means for reckoning foreign and Filipino equity ownership in an "investee" corporation: x x x Under the above-quoted SEC Rules, there are two cases in determining the nationality of the Investee Corporation. The first case is the 'liberal rule,' later coined by the SEC as the Control Test in its 30 May 1990 Opinion, x x x which states, '(s)hares belonging to corporations or partnerships at least 60% of the capital of which is owned by Filipino citizens shall be considered as of Philippine nationality.' Under the liberal Control Test, there is no need to further trace the ownership of the 60% (or more) Filipino stockholdings of the Investing Corporation since a corporation which is at least 60% Filipino-owned is considered as Filipino. The second case is the Strict Rule or the Grandfather Rule Proper and pertains to the portion in said Paragraph 7 of the 1967 SEC Rules which states, 'but if the percentage of Filipino ownership in the corporation or partnership is less than 60%, only the number of shares corresponding to such percentage shall be counted as of Philippine nationality.' Under the Strict Rule or Grandfather Rule Proper, the combined totals in the Investing Corporation and the Investee Corporation must be traced (*i.e.*, 'grandfathered') to determine the total percentage of Filipino ownership. DOJ Opinion No. 20, series of 2005, then concluded as follows:[**T]he Grandfather Rule or the second part of the SEC Rule applies only when the 60-40 Filipino-foreign equity ownership is in doubt.** x x x The Foreign Investments Act's implementing rules and regulations are clear and unequivocal in declaring that the *Control Test* shall be applied to determine

Supreme Court E-Library

the nationality of a corporation in which another corporation owns stocks. From around the time of the issuance of the SEC's May 30, 1990 opinion x x x where the SEC stated that it "decided to do away with the strict application/computation of the so-called 'Grandfather Rule' x x x, and instead appl[y] the so-called 'Control Test'", the SEC "has consistently applied the control test". x x x The Foreign Investments Act and its implementing rules notwithstanding, the Department of Justice, in DOJ Opinion No. 20, series of 2005, still posited that the Grandfather Rule is still applicable, albeit "only when the 60-40 Filipino-foreign equity ownership is in doubt." Anchoring itself on DOJ Opinion No. 20, series of 2005, the SEC *En Banc* found the *Grandfather Rule* applicable in its March 25, 2010 decision in *Redmont Consolidated Mines Corp. v. McArthur Mining Corp.* x x x. It asserted that there was "doubt" in the compliance with the requisite 60-40 Filipino-foreign equity ownership[.] x x x On December 9, 2010, the SEC Office of the General Counsel (OGC) rendered an opinion (SEC-OGC Opinion No. 10-31) effectively abandoning the Control Test in favor of the Grandfather Rule[.]

4. ID.; ID.; ID.; ID.; THE GRANDFATHER RULE IS NOT ENSHRINED IN THE CONSTITUTION.— The 1987 Constitution is silent on the precise means through which foreign equity in a corporation shall be determined for the purpose of complying with nationalization requirements in each industry. If at all, it militates against the supposed preference for the Grandfather Rule that, its mention in the Constitutional Commission's deliberations notwithstanding, the 1987 Constitution was, ultimately, inarticulate on adopting a specific test or means. The 1987 Constitution is categorical in its omission. Its meaning is clear. That is to say, by its silence, it chose to not manifest a preference. Had there been any such preference, the Constitution could very well have said it. In 1986, when the Constitution was being drafted, the Grandfather Rule and the Control Test were not novel concepts. Both tests have been articulated since as far back as 1967. The Foreign Investments Act, while adopted in 1991, has "predecessor statute[s]" dating to before 1986. As earlier mentioned, these predecessors also define the term "Philippine national" and in substantially the same manner that Section 3 (a) of the Foreign Investments Act does. It is the same definition: This is the same basis for applying the Control Test. It is elementary that the Constitution

Supreme Court E-Library

is not primarily a lawyer's document. As the convoluted history of the Control Test and Grandfather Rule shows, even those learned in the law have been in conflict, if not in outright confusion, as to their application. It is not proper to insist upon the Grandfather Rule as enshrined in the Constitution – and as manifesting the sovereign people's will – when the Constitution makes absolutely no mention of it.

5. ID.; ID.; ID.; ID.; THE CONTROL TEST IS ESTABLISHED BY CONGRESSIONAL DICTUM.— The Foreign Investments Act applies to nationalized economic activities under the Constitution. Section 8 of the Foreign Investments Act provides that there shall be two (2) component lists, A and B, with List A pertaining to "the areas of activities reserved to Philippine nationals by mandate of the Constitution and specific laws." To reiterate, Section 3 (a) of the Foreign Investments Act defines a "Philippine national" as including "a corporation organized under the laws of the Philippines of which at least sixty per cent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines." This is a definition that is consistent with the first part of paragraph 7 of the 1967 SEC Rules, which, as proffered by DOJ Opinion No. 20, series of 2005, articulates the Control Test: "[s]hares belonging to corporations or partnerships at least 60 per cent of the capital of which is owned by Filipino citizens shall be considered as of Philippine nationality." Moreover, the Foreign Investments Act admits of situations where a corporation invests in another corporation by owning shares of the latter. Thus, the proviso in Section 3 (a) of the Foreign Investments Act reads: Provided, That where a corporation and its non-Filipino stockholders own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stock outstanding and entitled to vote of each of both corporations must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors of each of both corporations must be citizens of the Philippines, in order that the corporation shall be considered a Philippine national[.] Supplementing this is the last sentence of the first paragraph of Rule I, Section 1 (b) of the implementing rules and regulations of the Foreign Investments Act: "The Control Test shall be applied for this purpose." As such, by congressional dictum, which is properly interpreted by

Supreme Court E-Library

administrative rule making, the *Control Test* must govern in reckoning foreign equity ownership in corporations engaged in nationalized economic activities. It is through the Control Test that these corporations' *minimum* qualification to engage in nationalized economic activities adjudged.

6. ID.; ID.; ID.; ID.; THE CONTROL TEST SERVES THE RATIONALE FOR NATIONALIZING THE MINING ACTIVITY.— The application of the Control Test is by no means antithetical to the avowed policy of a "national economy effectively controlled by Filipinos." The Control Test promotes this policy. It is a matter of transitivity that if Filipino stockholders control a corporation which, in turn, controls another corporation, then the Filipino stockholders control the latter corporation, albeit indirectly or through the former corporation. x x x To reiterate, "[t]he purpose of the sixty per centum requirement is x x x to ensure that corporations x x x allowed to x x x exploit natural resources shall be controlled by Filipinos." The decisive consideration is therefore control rather than plain ownership of capital.

7. ID.; ID.; ID.; ID.; THE GRANDFATHER RULE DOES NOT GUARANTEE CONTROL AND CAN UNDERMINE THE RATIONALE FOR NATIONALIZATIOIN.— As against each other, it is the Control Test, rather than the Grandfather Rule, which better serves to ensure that Philippine nationals control a corporation. As is illustrated by the SEC's September 21, 1990 opinion addressed to Carag, Caballes, Jamora, Rodriguez and Somera Law Offices, **the application of the Grandfather Rule does not guarantee control by Filipino stockholders**. In certain instances, the application of the Grandfather Rule actually undermines the rationale (*i.e.*, control) for the nationalization of certain economic activities.

8. ID.; ID.; ID.; ID.; USE OF THE GRANDFATHER RULE PRESENTS PRACTICAL DIFFICULTIES.— Per SEC-OGC Opinion No. 10-31, the Grandfather Rule calls for the aggregation of stockholdings on the basis of the individual stockholders (*i.e.*, natural persons) of every investor corporation. This construction presents practical problems which, in many circumstances, render the reckoning of foreign equity a futile exercise. It is a given that a corporation may hold shares in another corporation. Having to reckon equity to that point when natural persons hold rights to stocks makes it conceivable that stockholdings

Supreme Court E-Library

will have to be traced *ad infinitum*. The Grandfather Rule, as conceived in SEC-OGC Opinion No. 10-31, will never be satisfied for as long as there is a corporation holding the shares of another corporation. This proposition is rendered even more difficult (and absurd) by how certain corporations are listed and traded in stock exchanges. In these cases, the ownership of stocks and the fractional composition of a corporation can change on a daily basis.

9. ID.; ID.; ID.; ID.; CONTROL TEST IS SUSTAINED BY THE MINING ACT.— The Foreign Investments Act's reckoning of a Philippine national on the basis of control and the requisite application of the Control Test are reinforced by the Mining Act. Section 3 (aq) of the Mining Act deems as a qualified person (for purposes of a mineral agreement) a "corporation, x x x at least sixty per centum (60%) of the capital of which is owned by citizens of the Philippines." Insofar as the controlling equity requirement is concerned, this is practically a restatement of Section 3 (a) of the Foreign Investments Act. Moreover, Section 3 (t), by defining a "foreign-owned corporation" as a "corporation, x x x in which less than fifty per centum (50%) of the capital is owned by Filipino citizens" is merely stating Section 3 (aq)'s inverse. Section 3 (t) remains consistent with the Control Test, for after all, a corporation in which less than half of the capital is owned by Filipino could not possibly be controlled by Filipinos.

10. ID.; ID.; ID.; ID.; THE GRANDFATHER RULE MAY BE APPLIED AS A SUPPLEMENT TO THE CONTROL TEST.— This standard under the Foreign Investments Act is the *Control Test.* Its application can be nuanced if there is a clear showing that the context of a case requires it. The Foreign Investments Act's standard should be applied with the end of achieving the rationale for nationalization. Thus, sixty percent equity ownership is *but a minimum*. This court's conception of what constitutes control – as articulated in *Gamboa* – must be deemed integrated into the Foreign Investment Act's standard. Bare ownership of 60% of a corporation's shares would not suffice. What is necessary is such ownership as will ensure control of a corporation. In *Gamboa,* "[f]ull beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is required." ***With this in mind, the Grandfather Rule may be used as a supplement to the***

Supreme Court E-Library

Control Test, that is, as a <u>further</u> check to ensure that control and beneficial ownership of a corporation is in fact lodged in Filipinos. x x x In instances where methods are employed to disable Filipinos from exercising control and reaping the economic benefits of an enterprise, the ostensible control vested by ownership of 60% of a corporation's capital may be pierced. Then, the Grandfather Rule allows for a further, more exacting examination of who actually controls and benefits from holding such capital.

11. ID.; ID.; ID.; ID.; PETITIONERS NARRA, TESORO, AND McARTHUR SATISFY THE MINIMUM REQUIREMENT OF 60% FILIPINO EQUITY HOLDING.— Proceeding from the findings of the Court of Appeals in its October 1, 2010 decision in CA-G.R. SP No. 109703, it appears that at least 60% of equities in Narra, Tesoro, and McArthur is owned by Philippine nationals. Per this initial analysis, Narra, Tesoro, and McArthur ostensibly satisfy the requirements of the Control Test in order that they may be deemed Filipino corporations. Attention must be drawn to how these findings fail to indicate which (fractional) portion of these equities consist of "shares of stock entitled to vote in the election of directors" or, if there is even any such portion of shares which are not entitled to vote. These findings fail to indicate any distinction between common shares and preferred shares (not entitled to vote). Absent a basis for reckoning non-voting shares, there is, thus, no basis for diminishing the 60% Filipino equity holding in Narra, Tesoro, and McArthur and undermining their having ostensibly satisfied the requirements of the Control Test in order to be deemed Filipino corporations qualified to enter into MPSAs[.]

12. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; TEST FOR DETERMINING EXISTENCE OF FORUM SHOPPING, EXPLAINED.— Equally settled is the test for determining forum shopping. As this court explained in *Yap v. Court of Appeals*: To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought. *Litis pendentia* "refers to that situation wherein another

Supreme Court E-Library

action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious." It requires the concurrence of three (3) requisites: (1) the identity of parties, or at least such as representing the same interests in both actions; (2) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other. In turn, prior judgment or *res judicata* bars a subsequent case when the following requisites concur: (1) the former judgment is final; (2) it is rendered by a court having jurisdiction over the subject matter and the parties; (3) it is a judgment or an order on the merits; (4) there is – between the first and the second actions – identity of parties, of subject matter, and of causes of action.

13. ID.; ID.; ID.; TAKING FOUR DIFFERENT REMEDIES GROUNDED ON THE SAME CAUSE AND CIRCUMSTANCES CONSTITUTES FORUM SHOPPING.— Redmont has taken at least four (4) distinct routes all seeking substantially the same remedy. Stripped of their verbosity and legalese, Redmont's petitions before the DENR Panel of Arbitrators, complaint before the Regional Trial Court, complaint before the Securities and Exchange Commission, and petition before the Office of the President all seek to prevent Narra, Tesoro, and McArthur as well as their co-respondents and/or co-defendants from engaging in mining operations. Moreover, these are all grounded on the same cause (*i.e.*, that they are disqualified from doing so because they fail to satisfy the requisite Filipino equity ownership) and premised on the same facts or circumstances. Redmont has created a situation where multiple tribunals must rule on the extent to which the parties adverse to Redmont have met the requisite Filipino equity ownership. It is certainly possible that conflicting decisions will be issued by the various tribunals over which Redmont's various applications for relief have been lodged. It is, thus, glaring that the very evil sought to be prevented by the rule against forum shopping is being foisted by Redmont.

14. ID.; ID.; ID.; ID.; AS THE CONSEQUENCES OF WILLFUL FORUM SHOPPING ARE CLEAR, THE ACTIONS SUBJECT OF THESE CONSOLIDATED PETITIONS MUST BE

Supreme Court E-Library

DISMISSED.— The consequences of willful forum shopping are clear. x x x It strains credulity to accept that Redmont's actions have not been willful. By filing petitions with the DENR Panel of Arbitrators, Redmont started the entire series of events that have culminated in: first, the present petition; second, the de-consolidated G.R. No. 205513; and third, at least one (1) more petition filed with this court. Following the adverse decision of the Panel of Arbitrators, Narra, Tesoro, and McArthur pursued appeals before the Mines Adjudication Board. This is all but a logical consequence of the POA's adverse decision. While the appeal before the MAB was pending, Redmont filed a complaint with the SEC and then filed a complaint with the Regional Trial Court to enjoin the MAB from proceeding. Redmont seems to have conveniently forgotten that it was its own actions that gave rise to the proceedings before the MAB in the first place. Moreover, even as all these were pending and in various stages of appeal and/or review, Redmont still filed a petition before the Office of the President. Consistent with Rule 7, Section 5 of the 1997 Rules of Civil Procedure, the actions subject of these consolidated petitions must be dismissed with prejudice.

APPEARANCES OF COUNSEL

Caguioa and Gatmaytan Law Office for petitioners.
Reynaldo Melendres and *Legaspi Barcelo & Salamera Law Office* for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 filed by Narra Nickel and Mining Development Corp. (Narra), Tesoro Mining and Development, Inc. (Tesoro), and McArthur Mining Inc. (McArthur), which seeks to reverse the October 1, 2010 Decision[1] and the February 15, 2011 Resolution

[1] Penned by Associate Justice Reuben C. Ayson and concurred in by Associate Justices Amelita G. Tolentino and Normandie B. Pizzaro.

Supreme Court E-Library

of the Court of Appeals (CA).

The Facts

Sometime in December 2006, respondent Redmont Consolidated Mines Corp. (Redmont), a domestic corporation organized and existing under Philippine laws, took interest in mining and exploring certain areas of the province of Palawan. After inquiring with the Department of Environment and Natural Resources (DENR), it learned that the areas where it wanted to undertake exploration and mining activities were already covered by Mineral Production Sharing Agreement (MPSA) applications of petitioners Narra, Tesoro and McArthur.

Petitioner McArthur, through its predecessor-in-interest Sara Marie Mining, Inc. (SMMI), filed an application for an MPSA and Exploration Permit (EP) with the Mines and Geo-Sciences Bureau (MGB), Region IV-B, Office of the Department of Environment and Natural Resources (DENR). Subsequently, SMMI was issued MPSA-AMA-IVB-153 covering an area of over 1,782 hectares in Barangay Sumbiling, Municipality of Bataraza, Province of Palawan and EPA-IVB-44 which includes an area of 3,720 hectares in *Barangay* Malatagao, Bataraza, Palawan. The MPSA and EP were then transferred to Madridejos Mining Corporation (MMC) and, on November 6, 2006, assigned to petitioner McArthur.[2]

Petitioner Narra acquired its MPSA from Alpha Resources and Development Corporation and Patricia Louise Mining & Development Corporation (PLMDC) which previously filed an application for an MPSA with the MGB, Region IV-B, DENR on January 6, 1992. Through the said application, the DENR issued MPSA-IV-1-12 covering an area of 3.277 hectares in *barangays* Calategas and San Isidro, Municipality of Narra, Palawan. Subsequently, PLMDC conveyed, transferred and/or assigned its rights and interests over the MPSA application in favor of Narra.

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[2] *Rollo*, p. 573.

Supreme Court E-Library

Another MPSA application of SMMI was filed with the DENR Region IV-B, labeled as MPSA-AMA-IVB-154 (formerly EPA-IVB-47) over 3,402 hectares in *Barangays* Malinao and Princesa Urduja, Municipality of Narra, Province of Palawan. SMMI subsequently conveyed, transferred and assigned its rights and interest over the said MPSA application to Tesoro.

On January 2, 2007, Redmont filed before the Panel of Arbitrators (POA) of the DENR three (3) separate petitions for the denial of petitioners' applications for MPSA designated as AMA-IVB-153, AMA-IVB-154 and MPSA IV-1-12.

In the petitions, Redmont alleged that at least 60% of the capital stock of McArthur, Tesoro and Narra are owned and controlled by MBMI Resources, Inc. (MBMI), a 100% Canadian corporation. Redmont reasoned that since MBMI is a considerable stockholder of petitioners, it was the driving force behind petitioners' filing of the MPSAs over the areas covered by applications since it knows that it can only participate in mining activities through corporations which are deemed Filipino citizens. Redmont argued that given that petitioners' capital stocks were mostly owned by MBMI, they were likewise disqualified from engaging in mining activities through MPSAs, which are reserved only for Filipino citizens.

In their Answers, petitioners averred that they were qualified persons under Section 3(aq) of Republic Act No. (RA) 7942 or the *Philippine Mining Act of 1995* which provided:

> Sec. 3 Definition of Terms. As used in and for purposes of this Act, the following terms, whether in singular or plural, shall mean:
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> x x x x x x x x x
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> (aq) "Qualified person" means any citizen of the Philippines with capacity to contract, or a corporation, partnership, association, or cooperative organized or authorized for the purpose of engaging in mining, with technical and financial capability to undertake mineral resources development and duly registered in accordance with law at least sixty per cent (60%) of the capital of which is owned by

Supreme Court E-Library

citizens of the Philippines: Provided, That a legally organized foreign-owned corporation shall be deemed a qualified person for purposes of granting an exploration permit, financial or technical assistance agreement or mineral processing permit.

Additionally, they stated that their nationality as applicants is immaterial because they also applied for Financial or Technical Assistance Agreements (FTAA) denominated as AFTA-IVB-09 for McArthur, AFTA-IVB-08 for Tesoro and AFTA-IVB-07 for Narra, which are granted to foreign-owned corporations. Nevertheless, **they claimed that the issue on nationality should not be raised since McArthur, Tesoro and Narra are in fact Philippine Nationals as 60% of their capital is owned by citizens of the Philippines**. They asserted that though MBMI owns 40% of the shares of PLMC (which owns 5,997 shares of Narra),[3] 40% of the shares of MMC (which owns 5,997 shares of McArthur)[4] and 40% of the shares of SLMC (which, in turn, owns 5,997 shares of Tesoro),[5] the shares of MBMI will not make it the owner of at least 60% of the capital stock of each of petitioners. **They added that the best tool used in determining the nationality of a corporation is the "control test," embodied in Sec. 3 of RA 7042 or the *Foreign Investments Act of 1991***. They also claimed that the POA of DENR did not have jurisdiction over the issues in Redmont's petition since they are not enumerated in Sec. 77 of RA 7942. Finally, they stressed that Redmont has no personality to sue them because it has no pending claim or application over the areas applied for by petitioners.

On December 14, 2007, the POA issued a Resolution disqualifying petitioners from gaining MPSAs. It held:

> [I]t is clearly established that respondents are not qualified applicants to engage in mining activities. On the other hand, [Redmont] having filed its own applications for an EPA over the areas earlier covered by the MPSA application of respondents may be considered

[3] *Id.* at 86.

[4] *Id.* at 82.

[5] *Id.* at 84.

Supreme Court E-Library

if and when they are qualified under the law. The violation of the requirements for the issuance and/or grant of permits over mining areas is clearly established thus, there is reason to believe that the cancellation and/or revocation of permits already issued under the premises is in order and open the areas covered to other qualified applicants.

x x x x x x x x x

WHEREFORE, the Panel of Arbitrators finds the Respondents, McArthur Mining Inc., Tesoro Mining and Development, Inc., and Narra Nickel Mining and Development Corp. as, DISQUALIFIED for being considered as Foreign Corporations. Their Mineral Production Sharing Agreement (MPSA) are hereby x x x DECLARED NULL AND VOID.[6]

The POA considered petitioners as foreign corporations being "effectively controlled" by MBMI, a 100% Canadian company and declared their MPSAs null and void. In the same Resolution, it gave due course to Redmont's EPAs. Thereafter, on February 7, 2008, the POA issued an Order[7] denying the Motion for Reconsideration filed by petitioners.

Aggrieved by the Resolution and Order of the POA, McArthur and Tesoro filed a joint Notice of Appeal[8] and Memorandum of Appeal[9] with the Mines Adjudication Board (MAB) while Narra separately filed its Notice of Appeal[10] and Memorandum of Appeal.[11]

In their respective memorandum, petitioners emphasized that they are qualified persons under the law. Also, through a letter, they informed the MAB that they had their individual MPSA applications converted to FTAAs. McArthur's FTAA was

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[6] *Id.* at 139-140.

[7] *Id.* at 379.

[8] *Id.* at 378.

[9] *Id.* at 390.

[10] *Id.* at 411.

[11] *Id.* at 414.

Supreme Court E-Library

denominated as AFTA-IVB-09[12] on May 2007, while Tesoro's MPSA application was converted to AFTA-IVB-08[13] on May 28, 2007, and Narra's FTAA was converted to AFTA-IVB-07[14] on March 30, 2006.

Pending the resolution of the appeal filed by petitioners with the MAB, Redmont filed a Complaint[15] with the Securities and Exchange Commission (SEC), seeking the revocation of the certificates for registration of petitioners on the ground that they are foreign-owned or controlled corporations engaged in mining in violation of Philippine laws. Thereafter, Redmont filed on September 1, 2008 a Manifestation and Motion to Suspend Proceeding before the MAB praying for the suspension of the proceedings on the appeals filed by McArthur, Tesoro and Narra.

Subsequently, on September 8, 2008, Redmont filed before the Regional Trial Court of Quezon City, Branch 92 (RTC) a Complaint[16] for injunction with application for issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction, docketed as Civil Case No. 08-63379. Redmont prayed for the deferral of the MAB proceedings pending the resolution of the Complaint before the SEC.

But before the RTC can resolve Redmont's Complaint and applications for injunctive reliefs, the MAB issued an Order on September 10, 2008, finding the appeal meritorious. It held:

WHEREFORE, in view of the foregoing, the Mines Adjudication Board hereby REVERSES and SETS ASIDE the Resolution dated 14 December 2007 of the Panel of Arbitrators of Region IV-B (MIMAROPA) in POA-DENR Case Nos. 2001-01, 2007-02 and 2007-03, and its Order dated 07 February 2008 denying the Motions for Reconsideration of the Appellants. The Petition filed by Redmont

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[12] *Id.* at 353.

[13] *Id.* at 367, *see* application on p. 368.

[14] *Id.* at 334-337.

[15] *Id.* at 438.

[16] *Id.* at 460.

Supreme Court E-Library

Consolidated Mines Corporation on 02 January 2007 is hereby ordered DISMISSED.[17]

Belatedly, on September 16, 2008, the RTC issued an Order[18] granting Redmont's application for a TRO and setting the case for hearing the prayer for the issuance of a writ of preliminary injunction on September 19, 2008.

Meanwhile, on September 22, 2008, Redmont filed a Motion for Reconsideration[19] of the September 10, 2008 Order of the MAB. Subsequently, it filed a Supplemental Motion for Reconsideration[20] on September 29, 2008.

Before the MAB could resolve Redmont's Motion for Reconsideration and Supplemental Motion for Reconsideration, Redmont filed before the RTC a Supplemental Complaint[21] in Civil Case No. 08-63379.

On October 6, 2008, the RTC issued an Order[22] granting the issuance of a writ of preliminary injunction enjoining the MAB from finally disposing of the appeals of petitioners and from resolving Redmont's Motion for Reconsideration and Supplement Motion for Reconsideration of the MAB's September 10, 2008 Resolution.

On July 1, 2009, however, the MAB issued a second Order denying Redmont's Motion for Reconsideration and Supplemental Motion for Reconsideration and resolving the appeals filed by petitioners.

Hence, the petition for review filed by Redmont before the CA, assailing the Orders issued by the MAB. On October 1,

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[17] *Id.* at 202.

[18] *Id.* at 473.

[19] *Id.* at 486.

[20] *Id.* at 522.

[21] *Id.* at 623.

[22] *Id.* at 629.

Supreme Court E-Library

2010, the CA rendered a Decision, the dispositive of which reads:

> WHEREFORE, the Petition is PARTIALLY GRANTED. The assailed Orders, dated September 10, 2008 and July 1, 2009 of the Mining Adjudication Board are reversed and set aside. The findings of the Panel of Arbitrators of the Department of Environment and Natural Resources that respondents McArthur, Tesoro and Narra are foreign corporations is upheld and, therefore, the rejection of their applications for Mineral Product Sharing Agreement should be recommended to the Secretary of the DENR.
>
> With respect to the applications of respondents McArthur, Tesoro and Narra for Financial or Technical Assistance Agreement (FTAA) or conversion of their MPSA applications to FTAA, the matter for its rejection or approval is left for determination by the Secretary of the DENR and the President of the Republic of the Philippines.
>
> SO ORDERED.[23]

In a Resolution dated February 15, 2011, the CA denied the Motion for Reconsideration filed by petitioners.

After a careful review of the records, the CA found that there was doubt as to the nationality of petitioners when it realized that petitioners had a common major investor, MBMI, a corporation composed of 100% Canadians. Pursuant to the first sentence of paragraph 7 of Department of Justice (DOJ) Opinion No. 020, Series of 2005, adopting the 1967 SEC Rules which implemented the requirement of the Constitution and other laws pertaining to the exploitation of natural resources, the CA used the "grandfather rule" to determine the nationality of petitioners. It provided:

> Shares belonging to corporations or partnerships at least 60% of the capital of which is owned by Filipino citizens shall be considered as of Philippine nationality, **but if the percentage of Filipino ownership in the corporation or partnership is less than 60%, only the number of shares corresponding to such percentage shall be counted as of Philippine nationality**. Thus, if 100,000 shares are registered in the

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[23] *Id*. at 95-96.

Supreme Court E-Library

name of a corporation or partnership at least 60% of the capital stock or capital, respectively, of which belong to Filipino citizens, all of the shares shall be recorded as owned by Filipinos. But if less than 60%, or say, 50% of the capital stock or capital of the corporation or partnership, respectively, belongs to Filipino citizens, only 50,000 shares shall be recorded as belonging to aliens.[24] (emphasis supplied)

In determining the nationality of petitioners, the CA looked into their corporate structures and their corresponding common shareholders. Using the grandfather rule, the CA discovered that MBMI in effect owned majority of the common stocks of the petitioners as well as at least 60% equity interest of other majority shareholders of petitioners through joint venture agreements. The CA found that through a "web of corporate layering, it is clear that one common controlling investor in all mining corporations involved x x x is MBMI."[25] Thus, it concluded that petitioners McArthur, Tesoro and Narra are also in partnership with, or privies-in-interest of, MBMI.

Furthermore, the CA viewed the conversion of the MPSA applications of petitioners into FTAA applications suspicious in nature and, as a consequence, it recommended the rejection of petitioners' MPSA applications by the Secretary of the DENR.

With regard to the settlement of disputes over rights to mining areas, the CA pointed out that the POA has jurisdiction over them and that it also has the power to determine the nationality of petitioners as a prerequisite of the Constitution prior the conferring of rights to "co-production, joint venture or production-sharing agreements" of the state to mining rights. However, it also stated that the POA's jurisdiction is limited only to the resolution of the dispute and not on the approval or rejection of the MPSAs. It stipulated that only the Secretary of the DENR is vested with the power to approve or reject applications for MPSA.

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[24] Department of Justice Opinion No. 020, Series of 2005, adopting the 1967 SEC Rules.

[25] *Rollo*, p. 89.

Supreme Court E-Library

Finally, the CA upheld the findings of the POA in its December 14, 2007 Resolution which considered petitioners McArthur, Tesoro and Narra as foreign corporations. Nevertheless, the CA determined that the POA's declaration that the MPSAs of McArthur, Tesoro and Narra are void is highly improper.

While the petition was pending with the CA, Redmont filed with the Office of the President (OP) a petition dated May 7, 2010 seeking the cancellation of petitioners' FTAAs. The OP rendered a Decision[26] on April 6, 2011, wherein it cancelled and revoked petitioners' FTAAs for violating and circumventing the "Constitution x x x[,] the Small Scale Mining Law and Environmental Compliance Certificate as well as Sections 3 and 8 of the Foreign Investment Act and E.O. 584."[27] The OP, in affirming the cancellation of the issued FTAAs, agreed with Redmont stating that petitioners committed violations against the abovementioned laws and failed to submit evidence to negate them. The Decision further quoted the December 14, 2007 Order of the POA focusing on the alleged misrepresentation and claims made by petitioners of being domestic or Filipino corporations and the admitted continued mining operation of PMDC using their locally secured Small Scale Mining Permit inside the area earlier applied for an MPSA application which was eventually transferred to Narra. It also agreed with the POA's estimation that the filing of the FTAA applications by petitioners is a clear admission that they are "not capable of conducting a large scale mining operation and that they need the financial and technical assistance of a foreign entity in their operation, that is why they sought the participation of MBMI Resources, Inc."[28] The Decision further quoted:

> The filing of the FTAA application on June 15, 2007, during the pendency of the case only demonstrate the violations and lack of qualification of the respondent corporations to engage in mining. The filing of the FTAA application conversion which is allowed foreign corporation of the earlier MPSA is an admission that indeed the

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[26] *Id*. at 573-590, O.P. Case No. 10-E-229, penned by Executive Secretary Paquito N. Ochoa, Jr.

[27] *Id*. at 587.

[28] *Id*.

Supreme Court E-Library

respondent is not Filipino but rather of foreign nationality who is disqualified under the laws. Corporate documents of MBMI Resources, Inc. furnished its stockholders in their head office in Canada suggest that they are conducting operation only through their local counterparts.[29]

The Motion for Reconsideration of the Decision was further denied by the OP in a Resolution[30] dated July 6, 2011. Petitioners then filed a Petition for Review on *Certiorari* of the OP's Decision and Resolution with the CA, docketed as CA-G.R. SP No. 120409. In the CA Decision dated February 29, 2012, the CA affirmed the Decision and Resolution of the OP. Thereafter, petitioners appealed the same CA decision to this Court which is now pending with a different division.

Thus, the instant petition for review against the October 1, 2010 Decision of the CA. Petitioners put forth the following errors of the CA:

I.

The Court of Appeals erred when it did not dismiss the case for mootness despite the fact that the subject matter of the controversy, the MPSA Applications, have already been converted into FTAA applications and that the same have already been granted.

II.

The Court of Appeals erred when it did not dismiss the case for lack of jurisdiction considering that the Panel of Arbitrators has no jurisdiction to determine the nationality of Narra, Tesoro and McArthur.

III.

The Court of Appeals erred when it did not dismiss the case on account of Redmont's willful forum shopping.

IV.

The Court of Appeals' ruling that Narra, Tesoro and McArthur are foreign corporations based on the "Grandfather Rule" is contrary to

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[29] *Id*. at 588.

[30] *Id*. at 591-594.

Supreme Court E-Library

law, particularly the express mandate of the Foreign Investments Act of 1991, as amended, and the FIA Rules.

V.

The Court of Appeals erred when it applied the exceptions to the *res inter alios acta* rule.

VI.

The Court of Appeals erred when it concluded that the conversion of the MPSA Applications into FTAA Applications were of "suspicious nature" as the same is based on mere conjectures and surmises without any shred of evidence to show the same.[31]

We find the petition to be without merit.

This case not moot and academic

The claim of petitioners that the CA erred in not rendering the instant case as moot is without merit.

Basically, a case is said to be moot and/or academic when it "ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value."[32] Thus, the courts "generally decline jurisdiction over the case or dismiss it on the ground of mootness."[33]

The "mootness" principle, however, does accept certain exceptions and the mere raising of an issue of "mootness" will not deter the courts from trying a case when there is a valid reason to do so. In *David v. Macapagal-Arroyo* (*David*), the Court provided four instances where courts can decide an otherwise moot case, thus:

1.) There is a grave violation of the Constitution;

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[31] *Id.* at 20-21.

[32] *David v. Macapagal-Arroyo*, G.R. No. 171396, *etc*., May 3, 2006, 489 SCRA 160.

[33] *Id*.

Supreme Court E-Library

2.) The exceptional character of the situation and paramount public interest is involved;

3.) When constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and

4.) The case is capable of repetition yet evading review.[34]

All of the exceptions stated above are present in the instant case. We of this Court note that a grave violation of the Constitution, specifically Section 2 of Article XII, is being committed by a foreign corporation right under our country's nose through a myriad of corporate layering under different, allegedly, Filipino corporations. The intricate corporate layering utilized by the Canadian company, MBMI, is of exceptional character and involves paramount public interest since it undeniably affects the exploitation of our Country's natural resources. The corresponding actions of petitioners during the lifetime and existence of the instant case raise questions as what principle is to be applied to cases with similar issues. No definite ruling on such principle has been pronounced by the Court; hence, the disposition of the issues or errors in the instant case will serve as a guide "to the bench, the bar and the public."[35] Finally, the instant case is capable of repetition yet evading review, since the Canadian company, MBMI, can keep on utilizing dummy Filipino corporations through various schemes of corporate layering and conversion of applications to skirt the constitutional prohibition against foreign mining in Philippine soil.

Conversion of MPSA applications to FTAA applications

We shall discuss the first error in conjunction with the sixth error presented by petitioners since both involve the conversion of MPSA applications to FTAA applications. Petitioners propound that the CA erred in ruling against them since the questioned MPSA applications were already converted into FTAA applications; thus, the issue on the prohibition relating

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[34] *Id*.

[35] *Id*.

Supreme Court E-Library

to MPSA applications of foreign mining corporations is academic. Also, petitioners would want us to correct the CA's finding which deemed the aforementioned conversions of applications as suspicious in nature, since it is based on mere conjectures and surmises and not supported with evidence.

We disagree.

The CA's analysis of the actions of petitioners after the case was filed against them by respondent is on point. The changing of applications by petitioners from one type to another just because a case was filed against them, in truth, would raise not a few sceptics' eyebrows. What is the reason for such conversion? Did the said conversion not stem from the case challenging their citizenship and to have the case dismissed against them for being "moot"? It is quite obvious that it is petitioners' strategy to have the case dismissed against them for being "moot."

Consider the history of this case and how petitioners responded to every action done by the court or appropriate government agency: on January 2, 2007, Redmont filed three separate petitions for denial of the MPSA applications of petitioners before the POA. On June 15, 2007, petitioners filed a conversion of their MPSA applications to FTAAs. The POA, in its December 14, 2007 Resolution, observed this suspect change of applications while the case was pending before it and held:

> The filing of the Financial or Technical Assistance Agreement application is a clear admission that the respondents are not capable of conducting a large scale mining operation and that they need the financial and technical assistance of a foreign entity in their operation that is why they sought the participation of MBMI Resources, Inc. The participation of MBMI in the corporation only proves the fact that it is the Canadian company that will provide the finances and the resources to operate the mining areas for the greater benefit and interest of the same and not the Filipino stockholders who only have a less substantial financial stake in the corporation.
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> x x x x x x x x x
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> x x x The filing of the FTAA application on **June 15, 2007**, **during**

Supreme Court E-Library

the pendency of the case only demonstrate the violations and lack of qualification of the respondent corporations to engage in mining. **The filing of the FTAA application conversion which is allowed foreign corporation of the earlier MPSA is an admission that indeed the respondent is not Filipino but rather of foreign nationality who is disqualified under the laws.** Corporate documents of MBMI Resources, Inc. furnished its stockholders in their head office in Canada suggest that they are conducting operation only through their local counterparts.[36]

On October 1, 2010, the CA rendered a Decision which partially granted the petition, reversing and setting aside the September 10, 2008 and July 1, 2009 Orders of the MAB. In the said Decision, the CA upheld the findings of the POA of the DENR that the herein petitioners are in fact foreign corporations thus a recommendation of the rejection of their MPSA applications were recommended to the Secretary of the DENR. With respect to the FTAA applications or conversion of the MPSA applications to FTAAs, the CA deferred the matter for the determination of the Secretary of the DENR and the President of the Republic of the Philippines.[37]

In their Motion for Reconsideration dated October 26, 2010, petitioners prayed for the dismissal of the petition asserting that on **April 5, 2010**, then President Gloria Macapagal-Arroyo signed and issued in their favor FTAA No. 05-2010-IVB, which rendered the petition moot and academic. However, the CA, in a Resolution dated February 15, 2011 denied their motion for being a mere "rehash of their claims and defenses."[38] Standing firm on its Decision, the CA affirmed the ruling that petitioners are, in fact, foreign corporations. On April 5, 2011, petitioners elevated the case to us via a Petition for Review on *Certiorari* under Rule 45, questioning the Decision of the CA. Interestingly, the OP rendered a Decision dated April 6, 2011, a day after this petition for review was filed, cancelling

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[36] *Rollo*, pp. 138-139.

[37] *Id.* at 95-96.

[38] *Id.* at 101.

Supreme Court E-Library

and revoking the FTAAs, quoting the Order of the POA and stating that petitioners are foreign corporations since they needed the financial strength of MBMI, Inc. in order to conduct large scale mining operations. The OP Decision also based the cancellation on the misrepresentation of facts and the violation of the "Small Scale Mining Law and Environmental Compliance Certificate as well as Sections 3 and 8 of the Foreign Investment Act and E.O. 584."[39] On July 6, 2011, the OP issued a Resolution, denying the Motion for Reconsideration filed by the petitioners.

Respondent Redmont, in its Comment dated October 10, 2011, made known to the Court the fact of the OP's Decision and Resolution. In their Reply, petitioners chose to ignore the OP Decision and continued to reuse their old arguments claiming that they were granted FTAAs and, thus, the case was moot. Petitioners filed a Manifestation and Submission dated October 19, 2012,[40] wherein they asserted that the present petition is moot since, in a remarkable turn of events, MBMI was able to sell/assign **all** its shares/interest in the "holding companies" to DMCI Mining Corporation (DMCI), a Filipino corporation and, in effect, making their respective corporations fully-Filipino owned.

Again, it is quite evident that petitioners have been trying to have this case dismissed for being "moot." Their final act, wherein MBMI was able to allegedly sell/assign **all** its shares and interest in the petitioner "holding companies" to DMCI, only proves that they were in fact **not** Filipino corporations from the start. The recent divesting of interest by MBMI will not change the stand of this Court with respect to the nationality of petitioners prior the suspicious change in their corporate structures. The new documents filed by petitioners are factual evidence that this Court has no power to verify.

The only thing clear and proved in this Court is the fact that the OP declared that petitioner corporations have violated several mining laws and made misrepresentations and falsehood in their

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[39] *Id*. at 587.

[40] *Id*. at 679-689.

Supreme Court E-Library

applications for FTAA which lead to the revocation of the said FTAAs, demonstrating that petitioners are not beyond going against or around the law using shifty actions and strategies. Thus, in this instance, we can say that their claim of mootness is moot in itself because their defense of conversion of MPSAs to FTAAs has been discredited by the OP Decision.

Grandfather test

The main issue in this case is centered on the issue of petitioners' nationality, whether Filipino or foreign. In their previous petitions, they had been adamant in insisting that they were Filipino corporations, until they submitted their Manifestation and Submission dated October 19, 2012 where they stated the alleged change of corporate ownership to reflect their Filipino ownership. Thus, there is a need to determine the nationality of petitioner corporations.

Basically, there are two acknowledged tests in determining the nationality of a corporation: the control test and the grandfather rule. Paragraph 7 of DOJ Opinion No. 020, Series of 2005, adopting the 1967 SEC Rules which implemented the requirement of the Constitution and other laws pertaining to the controlling interests in enterprises engaged in the exploitation of natural resources owned by Filipino citizens, provides:

> Shares belonging to corporations or partnerships at least 60% of the capital of which is owned by Filipino citizens shall be considered as of Philippine nationality, but if the percentage of Filipino ownership in the corporation or partnership is less than 60%, only the number of shares corresponding to such percentage shall be counted as of Philippine nationality. Thus, if 100,000 shares are registered in the name of a corporation or partnership at least 60% of the capital stock or capital, respectively, of which belong to Filipino citizens, all of the shares shall be recorded as owned by Filipinos. But if less than 60%, or say, 50% of the capital stock or capital of the corporation or partnership, respectively, belongs to Filipino citizens, only 50,000 shares shall be counted as owned by Filipinos and the other 50,000 shall be recorded as belonging to aliens.

The first part of paragraph 7, DOJ Opinion No. 020, stating "shares belonging to corporations or partnerships at least 60%

Supreme Court E-Library

of the capital of which is owned by Filipino citizens shall be considered as of Philippine nationality," pertains to the control test or the liberal rule. On the other hand, the second part of the DOJ Opinion which provides, "if the percentage of the Filipino ownership in the corporation or partnership is less than 60%, only the number of shares corresponding to such percentage shall be counted as Philippine nationality," pertains to the stricter, more stringent grandfather rule.

Prior to this recent change of events, petitioners were constant in advocating the application of the "control test" under RA 7042, as amended by RA 8179, otherwise known as the *Foreign Investments Act* (FIA), rather than using the stricter grandfather rule. The pertinent provision under Sec. 3 of the FIA provides:

SECTION 3. *Definitions*. — As used in this Act:

a.) The term Philippine national shall mean a citizen of the Philippines; or a domestic partnership or association wholly owned by the citizens of the Philippines; a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is wholly owned by Filipinos or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals: Provided, **That were a corporation and its non-Filipino stockholders own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stock outstanding and entitled to vote of each of both corporations must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors, in order that the corporation shall be considered a Philippine national**. (emphasis supplied)

The grandfather rule, petitioners reasoned, has no leg to stand on in the instant case since the definition of a "Philippine National" under Sec. 3 of the FIA does not provide for it. They further claim that the grandfather rule "has been abandoned and is no longer the applicable rule."[41] They also opined that the last portion of Sec. 3 of the FIA admits the application of a "corporate

[41] *Id*. at 33.

Supreme Court E-Library

layering" scheme of corporations. Petitioners claim that the clear and unambiguous wordings of the statute preclude the court from construing it and prevent the court's use of discretion in applying the law. They said that the plain, literal meaning of the statute meant the application of the control test is obligatory.

We disagree. "Corporate layering" is admittedly allowed by the FIA; but if it is used to circumvent the Constitution and pertinent laws, then it becomes illegal. Further, the pronouncement of petitioners that the grandfather rule has already been abandoned must be discredited for lack of basis.

Art. XII, Sec. 2 of the Constitution provides:

> Sec. 2. All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. **The State may directly undertake such activities, or it may enter into co-production, joint venture or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens.** Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law.
>
> x x x x x x x x x
>
> The President may enter into agreements with Foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources. (emphasis supplied)

Supreme Court E-Library

The emphasized portion of Sec. 2 which focuses on the State entering into different types of agreements for the exploration, development, and utilization of natural resources with entities who are deemed Filipino due to 60 percent ownership of capital is pertinent to this case, since the issues are centered on the utilization of our country's natural resources or specifically, mining. Thus, there is a need to ascertain the nationality of petitioners since, as the Constitution so provides, such agreements are only allowed corporations or associations "at least 60 percent of such capital is owned by such citizens." The deliberations in the Records of the 1986 Constitutional Commission shed light on how a citizenship of a corporation will be determined:

Mr. BENNAGEN: Did I hear right that the Chairman's interpretation of an independent national economy is freedom from undue foreign control? What is the meaning of undue foreign control?

MR. VILLEGAS: Undue foreign control is foreign control which sacrifices national sovereignty and the welfare of the Filipino in the economic sphere.

MR. BENNAGEN: Why does it have to be qualified still with the word "undue"? Why not simply freedom from foreign control? I think that is the meaning of independence, because as phrased, it still allows for foreign control.

MR. VILLEGAS: It will now depend on the interpretation because if, for example, we retain the 60/40 possibility in the cultivation of natural resources, 40 percent involves some control; not total control, but some control.

MR. BENNAGEN: In any case, I think in due time we will propose some amendments.

MR. VILLEGAS: Yes. But we will be open to improvement of the phraseology.

Mr. BENNAGEN: Yes.
Thank you, Mr. Vice-President.

x x x x x x x x x

MR. NOLLEDO: In Sections 3, 9 and 15, the Committee stated local or Filipino equity and foreign equity; namely, 60-40 in Section 3, 60-

Supreme Court E-Library

40 in Section 9, and 2/3-1/3 in Section 15.

MR. VILLEGAS: That is right.

MR. NOLLEDO: In teaching law, we are always faced with the question: 'Where do we base the equity requirement, is it on the authorized capital stock, on the subscribed capital stock, or on the paid-up capital stock of a corporation'? Will the Committee please enlighten me on this?

MR. VILLEGAS: We have just had a long discussion with the members of the team from the UP Law Center who provided us with a draft. The phrase that is contained here which we adopted from the UP draft is '60 percent of the voting stock.'

MR. NOLLEDO: That must be based on the subscribed capital stock, because unless declared delinquent, unpaid capital stock shall be entitled to vote.

MR. VILLEGAS: That is right.

MR. NOLLEDO: Thank you.

With respect to an investment by one corporation in another corporation, say, a corporation with 60-40 percent equity invests in another corporation which is permitted by the Corporation Code, does the Committee adopt the grandfather rule?

MR. VILLEGAS: Yes, that is the understanding of the Committee.

MR. NOLLEDO: Therefore, we need additional Filipino capital?

MR. VILLEGAS: Yes.[42] (emphasis supplied)

It is apparent that it is the intention of the framers of the Constitution to apply the grandfather rule in cases where corporate layering is present. Elementary in statutory construction is when there is conflict between the Constitution and a statute, the Constitution will prevail. In this instance, specifically pertaining to the provisions under Art. XII of the Constitution on National Economy and Patrimony, Sec. 3 of the FIA will

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[42] "Proposed Resolution No. 533- Resolution to Incorporate in the Article on National Economy and Patrimony a Provision on Ancestral Lands," III Record, CONSTITUTIONAL COMMISSION, R.C.C. No. 55 (August 13, 1986).

Supreme Court E-Library

have no place of application. As decreed by the honorable framers of our Constitution, the grandfather rule prevails and must be applied.

Likewise, paragraph 7, DOJ Opinion No. 020, Series of 2005 provides:

The above-quoted SEC Rules provide for the manner of calculating the Filipino interest in a corporation for purposes, among others, of determining compliance with nationality requirements (the 'Investee Corporation'). Such manner of computation is necessary since the shares in the Investee Corporation may be owned both by individual stockholders ('Investing Individuals') and by corporations and partnerships ('Investing Corporation'). The said rules thus provide for the determination of nationality depending on the ownership of the Investee Corporation and, in certain instances, the Investing Corporation.

Under the above-quoted SEC Rules, there are two cases in determining the nationality of the Investee Corporation. The first case is the 'liberal rule', later coined by the SEC as the Control Test in its 30 May 1990 Opinion, and pertains to the portion in said Paragraph 7 of the 1967 SEC Rules which states, '(s)hares belonging to corporations or partnerships at least 60% of the capital of which is owned by Filipino citizens shall be considered as of Philippine nationality.' Under the liberal Control Test, there is no need to further trace the ownership of the 60% (or more) Filipino stockholdings of the Investing Corporation since a corporation which is at least 60% Filipino-owned is considered as Filipino.

The second case is the Strict Rule or the Grandfather Rule Proper and pertains to the portion in said Paragraph 7 of the 1967 SEC Rules which states, "but if the percentage of Filipino ownership in the corporation or partnership is less than 60%, only the number of shares corresponding to such percentage shall be counted as of Philippine nationality." Under the Strict Rule or Grandfather Rule Proper, the combined totals in the Investing Corporation and the Investee Corporation must be traced (*i.e.*, "grandfathered") to determine the total percentage of Filipino ownership.

Moreover, the ultimate Filipino ownership of the shares must first be traced to the level of the Investing Corporation and added to the shares directly owned in the Investee Corporation x x x.

Supreme Court E-Library

x x x x x x x x x

In other words, based on the said SEC Rule and DOJ Opinion, the **Grandfather Rule or the second part of the SEC Rule applies only when the 60-40 Filipino-foreign equity ownership is in doubt** (*i.e.*, in cases where the joint venture corporation with Filipino and foreign stockholders with less than 60% Filipino stockholdings [or 59%] invests in other joint venture corporation which is either 60-40% Filipino-alien or the 59% less Filipino). **Stated differently, where the 60-40 Filipino-foreign equity ownership is not in doubt, the Grandfather Rule will not apply**. (emphasis supplied)

After a scrutiny of the evidence extant on record, the Court finds that this case calls for the application of the grandfather rule since, as ruled by the POA and affirmed by the OP, doubt prevails and persists in the corporate ownership of petitioners. Also, as found by the CA, doubt is present in the 60-40 Filipino equity ownership of petitioners Narra, McArthur and Tesoro, since their common investor, the 100% Canadian corporation––MBMI, funded them. However, petitioners also claim that there is "doubt" only when the stockholdings of Filipinos are less than 60%.[43]

The assertion of petitioners that "doubt" only exists when the stockholdings are less than 60% fails to convince this Court. DOJ Opinion No. 20, which petitioners quoted in their petition, only made an example of an instance where "doubt" as to the ownership of the corporation exists. It would be ludicrous to limit the application of the said word only to the instances where the stockholdings of non-Filipino stockholders are more than 40% of the total stockholdings in a corporation. The corporations interested in circumventing our laws would clearly strive to have "60% Filipino Ownership" at face value. It would be senseless for these applying corporations to state in their respective articles of incorporation that they have less than 60% Filipino stockholders since the applications will be denied instantly. Thus, various corporate schemes and layerings are utilized to circumvent the application of the Constitution.

Obviously, the instant case presents a situation which exhibits

[43] *Rollo*, p. 44, quoting DOJ Opinion No. 20.

Supreme Court E-Library

a scheme employed by stockholders to circumvent the law, creating a cloud of doubt in the Court's mind. To determine, therefore, the actual participation, direct or indirect, of MBMI, the grandfather rule must be used.

McArthur Mining, Inc.

To establish the actual ownership, interest or participation of MBMI in each of petitioners' corporate structure, they have to be "grandfathered."

As previously discussed, McArthur acquired its MPSA application from MMC, which acquired its application from SMMI. McArthur has a capital stock of ten million pesos (PhP 10,000,000) divided into 10,000 common shares at one thousand pesos (PhP 1,000) per share, subscribed to by the following:[44]

Name	Nationality	Number of Shares	Amount Subscribed	Amount Paid
Madridejos Mining Corporation	Filipino	5,997	PhP5,997,000.00	PpP825,000.00
MBMI Resources Inc.	Canadian	3,998	PhP3,998,000.00	PhP1,878,000.00
Lauro L. Salazar	Filipino	1	PhP 1,000.00	PhP 1,000.00
Fernando B. Esguerra	Filipino	1	PhP 1,000.00	PhP 1,000.00
Manuel A. Agcaoili	Filipino	1	PhP 1,000.00	PhP 1,000.00
Michael T. Mason	American	1	PhP 1,000.00	PhP 1,000.00
Kenneth Cawkell	Canadian	1	PhP 1,000.00	PhP2,708,174.60 (emphasis supplied)
	Total	10,000	PhP10,000,000.00	

Interestingly, looking at the corporate structure of MMC, we take note that it has a similar structure and composition as McArthur. In fact, it would seem that MBMI is also a major investor and "controls"[45] MBMI and also, similar nominal

[44] *Id*. at 82.

[45] *Id*.

Supreme Court E-Library

shareholders were present, i.e. Fernando B. Esguerra (Esguerra), Lauro L. Salazar (Salazar), Michael T. Mason (Mason) and Kenneth Cawkell (Cawkell):

Madridejos Mining Corporation

Name	Nationality	Number of Shares	Amount Subscribed	Amount Paid
Olympic Mines & Development Corp.	Filipino	6,663	PhP6,663,000.00	**PhP 0**
MBMI Resources, Inc.	Canadian	3,331	PhP3,331.000.00	PhP2,803,900.00
Amanti Limson	Filipino	1	PhP1,000.00	PhP1,000.00
Fernando B. Esguerra	Filipino	1	PhP1,000.00	PhP1,000.00
Lauro Salazar	Filipino	1	PhP1,000.00	PhP1,000.00
Emmanuel G. Hernando	Filipino	1	PhP1,000.00	PhP1,000.00
Michael T. Mason	American	1	PhP1,000.00	PhP1,000.00
Kenneth Cawkell	Canadian	1	PhP1,000.00	PhP1,000.00
	Total	10,000	PhP10,000,000.00	PhP2,809,900.00 (emphasis supplied)

Noticeably, Olympic Mines & Development Corporation (Olympic) did not pay any amount with respect to the number of shares they subscribed to in the corporation, which is quite absurd since Olympic is the major stockholder in MMC. MBMI's 2006 Annual Report sheds light on why Olympic failed to pay any amount with respect to the number of shares it subscribed to. It states that Olympic entered into joint venture agreements with several Philippine companies, wherein it holds directly and indirectly a 60% effective equity interest in the Olympic Properties.[46] Quoting the said Annual report:

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[46] *Id*. at 83.

Supreme Court E-Library

On September 9, 2004, the Company and Olympic Mines & Development Corporation ("Olympic") entered into a series of agreements including a Property Purchase and Development Agreement (the Transaction Documents) with respect to three nickel laterite properties in Palawan, Philippines (the "Olympic Properties"). **The Transaction Documents effectively establish a joint venture between the Company and Olympic for purposes of developing the Olympic Properties. The Company holds directly and indirectly an initial 60% interest in the joint venture. Under certain circumstances and upon achieving certain milestones, the Company may earn up to a 100% interest**, subject to a 2.5% net revenue royalty.[47] (emphasis supplied)

Thus, as demonstrated in this first corporation, McArthur, when it is "grandfathered," company layering was utilized by MBMI to gain control over McArthur. It is apparent that MBMI has more than 60% or more equity interest in McArthur, making the latter a foreign corporation.

Tesoro Mining and Development, Inc.

Tesoro, which acquired its MPSA application from SMMI, has a capital stock of ten million pesos (PhP10,000,000) divided into ten thousand (10,000) common shares at PhP1,000 per share, as demonstrated below:

Name	Nationality	Number of Shares	Amount Subscribed	Amount Paid
Sara Marie Mining, Inc.	Filipino	5,997	PhP5,997,000.00	PhP825,000.00
MBMI Resources, Inc.	Canadian	3,998	PhP3,998,000.00	PhP1,878,174.60
Lauro L. Salazar	Filipino	1	PhP 1,000.00	PhP 1,000.00
Fernando B. Esguerra	Filipino	1	PhP 1,000.00	PhP 1,000.00
Manuel A. Agcaoili	Filipino	1	PhP 1,000.00	PhP 1,000.00
Michael T. Mason	American	1	PhP 1,000.00	PhP 1,000.00
Kenneth Cawkell	Canadian	1	PhP 1,000.00	PhP 1,000.00
	Total	10,000	PhP10,000,000.00	PhP2,708,174.60 (emphasis supplied)

[47] *Id*.

Supreme Court E-Library

Except for the name "Sara Marie Mining, Inc.," the table above shows exactly the same figures as the corporate structure of petitioner McArthur, down to the last centavo. All the other shareholders are the same: MBMI, Salazar, Esguerra, Agcaoili, Mason and Cawkell. The figures under "Nationality," "Number of Shares," "Amount Subscribed," and "Amount Paid" are exactly the same. Delving deeper, we scrutinize SMMI's corporate structure:

Sara Marie Mining, Inc.

Name	Nationality	Number of Shares	Amount Subscribed	Amount Paid
Olympic Mines & Development Corp.	Filipino	6,663	PhP6,663,000.00	PhP 0
MBMI Resources, Inc.	Canadian	3,331	PhP3,331,000.00	PhP2,794,000.00
Amanti Limson	Filipino		PhP 1,000.00	PhP 1,000.00
Fernando B. Esguerra	Filipino	1 1	PhP 1,000.00	PhP 1,000.00
Lauro Salazar	Filipino		PhP 1,000.00	PhP 1,000.00
Emmanuel G. Hernando	Filipino	1 1	PhP 1,000.00	PhP 1,000.00
Michael T.Mason	American		PhP 1,000.00	PhP 1,000.00
Kenneth Cawkell	Canadian	1	PhP 1,000.00	PhP 1,000.00
	Total	1 10,000	PhP10,000,000.00	PhP2,809,900.00 (emphasis supplied)

After subsequently studying SMMI's corporate structure, it is not farfetched for us to spot the glaring similarity between SMMI and MMC's corporate structure. Again, the presence of identical stockholders, namely: Olympic, MBMI, Amanti Limson (Limson), Esguerra, Salazar, Hernando, Mason and Cawkell. The figures under the headings "Nationality," "Number of Shares," "Amount Subscribed," and "Amount Paid" are exactly the same except for the amount paid by MBMI which now reflects the amount of two million seven hundred ninety four thousand pesos (PhP 2,794,000). Oddly, the total value of the amount paid is two million eight hundred nine thousand nine hundred pesos (PhP 2,809,900).

Supreme Court E-Library

Accordingly, after "grandfathering" petitioner Tesoro and factoring in Olympic's participation in SMMI's corporate structure, it is clear that MBMI is in control of Tesoro and owns 60% or more equity interest in Tesoro. This makes petitioner Tesoro a non-Filipino corporation and, thus, disqualifies it to participate in the exploitation, utilization and development of our natural resources.

Narra Nickel Mining and Development Corporation

Moving on to the last petitioner, Narra, which is the transferee and assignee of PLMDC's MPSA application, whose corporate structure's arrangement is similar to that of the first two petitioners discussed. The capital stock of Narra is ten million pesos (PhP 10,000,000), which is divided into ten thousand common shares (10,000) at one thousand pesos (PhP 1,000) per share, shown as follows:

Name	Nationality	Number of Shares	Amount Subscribed	Amount Paid
Patricia Louise Mining & Development Corp.	Filipino	5,997	PhP 5,997,000.00	PhP 1,677,000.00
MBMI Resources, Inc.	Canadian	3,998	PhP 3,996,000.00	PhP 1,116,000.00
Higinio C. Mendoza, Jr.	Filipino	1	PhP 1,000.00	PhP 1,000.00
Henry E. Fernandez	Filipino	1	PhP 1,000.00	PhP 1,000.00
Manuel A. Agcaoili	Filipino	1	PhP 1,000.00	PhP 1,000.00
Ma. Elena A.Bocalan	Filipino	1	PhP 1,000.00	PhP 1,000.00
Bayani H. Agabin	Filipino	1	PhP 1,000.00	PhP 1,000.00
Robert L. Mc Curdy	American	1	PhP 1,000.00	PhP 1,000.00
Kenneth Cawkell	Canadian	10,000	PhP 1,000.00	PhP 1,000.00
	Total		PhP10,000,000.00	PhP2,800,000.00 (emphasis supplied)

Again, MBMI, along with other nominal stockholders, i.e., Mason, Agcaoili and Esguerra, is present in this corporate structure.

Supreme Court E-Library

Patricia Louise Mining & Development Corporation

Using the grandfather method, we further look and examine PLMDC's corporate structure:

Name	Nationality	Number of Shares	Amount Subscribed	Amount Paid
Palawan Alpha South Resources Development Corporation	Filipino	6,596	PhP6,596,000.00	PhP 0
MBMI Resources, Inc.	Canadian	3,396	PhP3,396,000.00	PhP2,796,000.00
Higinio C. Mendoza, Jr.	Filipino	1	PhP 1,000.00	PhP 1,000.00
Fernando B. Esguerra	Filipino	1	PhP 1,000.00	PhP 1,000.00
Henry E. Fernandez	Filipino	1	PhP 1,000.00	PhP 1,000.00
Lauro L.Salazar	Filipino	1	PhP 1,000.00	PhP 1,000.00
Manuel A Agcaoili	Filipino	1	PhP 1,000.00	PhP 1,000.00
Bayani H.Agabin	Filipino	1	PhP 1,000.00	PhP 1,000.00
Michael T. Mason	American	1	PhP1,000.00	PhP 1,000.00
Kenneth Cawkell	Canadian	1	PhP1,000.00	PhP 1,000.00
	Total	10,000	PhP10,000,000.00	PhP2,708,174.60 (emphasis supplied)

Yet again, the usual players in petitioners' corporate structures are present. Similarly, the amount of money paid by the 2nd tier majority stock holder, in this case, Palawan Alpha South Resources and Development Corp. (PASRDC), is zero.

Studying MBMI's *Summary of Significant Accounting Policies* dated October 31, 2005 explains the reason behind the intricate corporate layering that MBMI immersed itself in:

JOINT VENTURES The **Company's ownership interests in various mining ventures engaged in the acquisition, exploration and development of mineral properties in the Philippines** is described as follows:

Supreme Court E-Library

(a) Olympic Group

The Philippine companies holding the Olympic Property, and the ownership and interests therein, are as follows:

Olympic- Philippines (the "Olympic Group")
Sara Marie Mining Properties Ltd. ("Sara Marie") 33.3%
Tesoro Mining & Development, Inc. (Tesoro) 60.0%

Pursuant to the **Olympic joint venture agreement the Company holds directly and indirectly an effective equity interest in the Olympic Property of 60.0%.** Pursuant to a shareholders' agreement, the **Company exercises joint control over the companies in the Olympic Group.**

(b) Alpha Group

The Philippine companies holding the Alpha Property, and the ownership interests therein, are as follows:

Alpha- Philippines (the "Alpha Group")
Patricia Louise Mining Development Inc. ("Patricia") 34.0%
Narra Nickel Mining & Development Corporation (Narra) 60.4%

Under a joint venture agreement the **Company holds directly and indirectly an effective equity interest in the Alpha Property of 60.4%. Pursuant to a shareholders' agreement, the Company exercises joint control over the companies in the Alpha Group**.[48] (emphasis supplied)

Concluding from the above-stated facts, it is quite safe to say that petitioners McArthur, Tesoro and Narra are not Filipino since MBMI, a 100% Canadian corporation, owns 60% or more of their equity interests. Such conclusion is derived from grandfathering petitioners' corporate owners, namely: MMI, SMMI and PLMDC. Going further and adding to the picture, MBMI's *Summary of Significant Accounting Policies* statement—regarding the "joint venture" agreements that it entered into with the "Olympic" and "Alpha" groups—involves SMMI, Tesoro, PLMDC and Narra. Noticeably, the ownership of the "layered" corporations boils down to MBMI, Olympic or corporations under the "Alpha" group wherein MBMI has joint venture agreements with, practically exercising majority

[48] *Id*. at 87-88.

Supreme Court E-Library

control over the corporations mentioned. In effect, whether looking at the capital structure or the underlying relationships between and among the corporations, petitioners are NOT Filipino nationals and must be considered foreign since 60% or more of their capital stocks or equity interests are owned by MBMI.

Application of the *res inter alios acta* rule

Petitioners question the CA's use of the exception of the *res inter alios acta* or the "admission by co-partner or agent" rule and "admission by privies" under the Rules of Court in the instant case, by pointing out that statements made by MBMI should not be admitted in this case since it is not a party to the case and that it is not a "partner" of petitioners.

Secs. 29 and 31, Rule 130 of the Revised Rules of Court provide:

> Sec. 29. *Admission by co-partner or agent.*— The act or declaration of a partner or agent of the party within the scope of his authority and during the existence of the partnership or agency, may be given in evidence against such party after the partnership or agency is shown by evidence other than such act or declaration itself. The same rule applies to the act or declaration of a joint owner, joint debtor, or other person jointly interested with the party.
>
> Sec. 31. *Admission by privies.*— Where one derives title to property from another, the act, declaration, or omission of the latter, while holding the title, in relation to the property, is evidence against the former.

Petitioners claim that before the above-mentioned Rule can be applied to a case, "the partnership relation must be shown, and that proof of the fact must be made by evidence other than the admission itself."[49] Thus, petitioners assert that the CA erred in finding that a partnership relationship exists between them and MBMI because, in fact, no such partnership exists.

Partnerships vs. joint venture agreements

Petitioners claim that the CA erred in applying Sec. 29, Rule 130 of the Rules by stating that "by entering into a joint venture,

[49] *Id*. at 48.

Supreme Court E-Library

MBMI have a joint interest" with Narra, Tesoro and McArthur. They challenged the conclusion of the CA which pertains to the close characteristics of "partnerships" and "joint venture agreements." Further, they asserted that before this particular partnership can be formed, it should have been formally reduced into writing since the capital involved is more than three thousand pesos (PhP 3,000). Being that there is no evidence of written agreement to form a partnership between petitioners and MBMI, no partnership was created.

We disagree.

A partnership is defined as two or more persons who bind themselves to contribute money, property, or industry to a common fund with the intention of dividing the profits among themselves.[50] On the other hand, joint ventures have been deemed to be "akin" to partnerships since it is difficult to distinguish between joint ventures and partnerships. Thus:

> [T]he relations of the parties to a joint venture and the nature of their association are so similar and closely akin to a partnership that it is ordinarily held that their rights, duties, and liabilities are to be tested by rules which are closely analogous to and substantially the same, if not exactly the same, as those which govern partnership. In fact, it has been said that the trend in the law has been to blur the distinctions between a partnership and a joint venture, very little law being found applicable to one that does not apply to the other.[51]

Though some claim that partnerships and joint ventures are totally different animals, there are very few rules that differentiate one from the other; thus, joint ventures are deemed "akin" or similar to a partnership. In fact, in joint venture agreements, rules and legal incidents governing partnerships are applied.[52]

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[50] CIVIL CODE, Art. 1767.

[51] §4, 46 Am Jur 2d, pp. 24-25.

[52] §30, 46 Am Jur 2d – "law relating to dissolution and termination of partnerships is applicable to joint ventures"; §17, 46 Am Jur 2d – "In other words, an agreement to combine money, effort, skill, and knowledge, and to purchase land for the purpose of reselling or dealing with it at a profit, is a partnership agreement, or a joint venture having in general the

Supreme Court E-Library

Accordingly, culled from the incidents and records of this case, it can be assumed that the relationships entered between and among petitioners and MBMI are no simple "joint venture agreements." As a rule, corporations are prohibited from entering into partnership agreements; consequently, corporations enter into joint venture agreements with other corporations or partnerships for certain transactions in order to form "pseudo partnerships." Obviously, as the intricate web of "ventures" entered into by and among petitioners and MBMI was executed to circumvent the legal prohibition against corporations entering into partnerships, then the relationship created should be deemed as "partnerships," and the laws on partnership should be applied. Thus, a joint venture agreement between and among corporations may be seen as similar to partnerships since the elements of partnership are present.

Considering that the relationships found between petitioners and MBMI are considered to be partnerships, then the CA is justified in applying Sec. 29, Rule 130 of the Rules by stating that "by entering into a joint venture, MBMI have a joint interest"with Narra, Tesoro and McArthur.

Panel of Arbitrators' jurisdiction

We affirm the ruling of the CA in declaring that the POA has jurisdiction over the instant case. The POA has jurisdiction to settle disputes over rights to mining areas which definitely

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legal incidents of a partnership"; §50, 46 Am Jur 2d – "The relationship between joint venturers, like that existing between partners, is fiduciary in character and imposes upon all the participants the obligation of loyalty to the joint concern and of the utmost good faith, fairness, and honesty in their dealings with each other with respect to matters pertaining to the enterprise"; §57 – "It has already been pointed out that the rights, duties, and liabilities of joint venturers are governed, in general, by rules which are similar or analogous to those which govern the corresponding rights, duties, and liabilities of partners, except as they are limited by the fact that the scope of a joint venture is narrower than that of the ordinary partnership. As in the case of partners, joint venturers may be jointly and severally liable to third parties for the debts of the venture"; §58, 46 Am Jur 2d – "It has also been held that the liability for torts of parties to a joint venture agreement is governed by the law applicable to partnerships."

Supreme Court E-Library

involve the petitions filed by Redmont against petitioners Narra, McArthur and Tesoro. Redmont, by filing its petition against petitioners, is asserting the right of Filipinos over mining areas in the Philippines against alleged foreign-owned mining corporations. Such claim constitutes a "dispute" found in Sec. 77 of RA 7942:

> Within thirty (30) days, after the submission of the case by the parties for the decision, the panel shall have exclusive and original jurisdiction to hear and decide the following:
>
> (a) Disputes involving rights to mining areas
>
> (b) Disputes involving mineral agreements or permits

We held in *Celestial Nickel Mining Exploration Corporation v. Macroasia Corp.*:[53]

> The phrase "disputes involving rights to mining areas" refers to any adverse claim, protest, or opposition to an application for mineral agreement. The POA therefore has the jurisdiction to resolve any adverse claim, protest, or opposition to a pending application for a mineral agreement filed with the concerned Regional Office of the MGB. This is clear from Secs. 38 and 41 of the DENR AO 96-40, which provide:
>
> Sec. 38.
>
> x x x x x x x x x
>
> Within thirty (30) calendar days from the last date of publication/posting/radio announcements, the authorized officer(s) of the concerned office(s) shall issue a certification(s) that the publication/posting/radio announcement have been complied with**. Any adverse claim, protest, opposition shall be filed directly, within thirty (30) calendar days from the last date of publication/posting/radio announcement, with the concerned Regional Office or through any concerned PENRO or CENRO for filing in the concerned Regional Office for purposes of its resolution by the Panel of Arbitrators pursuant to the provisions of this Act and these implementing rules and regulations. Upon final resolution of any adverse claim, protest**

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[53] G.R. Nos. 169080, 172936, 176226 & 176319, December 19, 2007, 541 SCRA 166.

Supreme Court E-Library

or opposition, the Panel of Arbitrators shall likewise issue a certification to that effect within five (5) working days from the date of finality of resolution thereof. Where there is no adverse claim, protest or opposition, the Panel of Arbitrators shall likewise issue a Certification to that effect within five working days therefrom.

x x x x x x x x x

No Mineral Agreement shall be approved unless the requirements under this Section are fully complied with and any adverse claim/ protest/opposition is finally resolved by the Panel of Arbitrators.

Sec. 41.

x x x x x x x x x

Within fifteen (15) working days form the receipt of the Certification issued by the Panel of Arbitrators as provided in Section 38 hereof, the concerned Regional Director shall initially evaluate the Mineral Agreement applications in areas outside Mineral reservations. He/She shall thereafter endorse his/her findings to the Bureau for further evaluation by the Director within fifteen (15) working days from receipt of forwarded documents. Thereafter, the Director shall endorse the same to the secretary for consideration/ approval within fifteen working days from receipt of such endorsement.

In case of Mineral Agreement applications in areas with Mineral Reservations, within fifteen (15) working days from receipt of the Certification issued by the Panel of Arbitrators as provided for in Section 38 hereof, the same shall be evaluated and endorsed by the Director to the Secretary for consideration/approval within fifteen days from receipt of such endorsement. (emphasis supplied)

It has been made clear from the aforecited provisions that the "disputes involving rights to mining areas" under Sec. 77(a) specifically refer only to those disputes relative to the **applications** for a mineral agreement or conferment of mining rights.

The jurisdiction of the POA over adverse claims, protest, or oppositions to a mining right application is further elucidated by Secs. 219 and 43 of DENR AO 95-936, which read:

Sec. 219. *Filing of Adverse Claims/Conflicts/Oppositions.*— Notwithstanding the provisions of Sections 28, 43 and 57 above, **any adverse claim, protest or opposition specified in said sections**

Supreme Court E-Library

may also be filed directly with the Panel of Arbitrators within the concerned periods for filing such claim, protest or opposition as specified in said Sections.

Sec. 43. *Publication/Posting of Mineral Agreement.*—

x x x x x x x x x

The Regional Director or concerned Regional Director shall also cause the posting of the application on the bulletin boards of the Bureau, concerned Regional office(s) and in the concerned province(s) and municipality(ies), copy furnished the *barangays* where the proposed contract area is located once a week for two (2) consecutive weeks in a language generally understood in the locality. After forty-five (45) days from the last date of publication/posting has been made and no adverse claim, protest or opposition was filed within the said forty-five (45) days, the concerned offices shall issue a certification that publication/posting has been made and that no adverse claim, protest or opposition of whatever nature has been filed. **On the other hand, if there be any adverse claim, protest or opposition, the same shall be filed within forty-five (45) days from the last date of publication/posting, with the Regional Offices concerned, or through the Department's Community Environment and Natural Resources Officers (CENRO) or Provincial Environment and Natural Resources Officers (PENRO), to be filed at the Regional Office for resolution of the Panel of Arbitrators.** However previously published valid and subsisting mining claims are exempted from posted/posting required under this Section.

No mineral agreement shall be approved unless the requirements under this section are fully complied with and any opposition/adverse claim is dealt with in writing by the Director and resolved by the Panel of Arbitrators. (Emphasis supplied.)

It has been made clear from the aforecited provisions that the "disputes involving rights to mining areas" under Sec. 77(a) specifically refer only to those disputes relative to the **applications** for a mineral agreement or conferment of mining rights.

The jurisdiction of the POA over adverse claims, protest, or oppositions to a mining right application is further elucidated by Secs. 219 and 43 of DENRO AO 95-936, which reads:

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Supreme Court E-Library

any adverse claim, protest or opposition specified in said sections may also be filed directly with the Panel of Arbitrators within the concerned periods for filing such claim, protest or opposition as specified in said Sections.

Sec. 43. *Publication/Posting of Mineral Agreement Application*.-

x x x x x x x x x

The Regional Director or concerned Regional Director shall also cause the posting of the application on the bulletin boards of the Bureau, concerned Regional office(s) and in the concerned province(s) and municipality(ies), copy furnished the *barangays* where the proposed contract area is located once a week for two (2) consecutive weeks in a language generally understood in the locality. After forty-five (45) days from the last date of publication/posting has been made and no adverse claim, protest or opposition was filed within the said forty-five (45) days, the concerned offices shall issue a certification that publication/posting has been made and that no adverse claim, protest or opposition of whatever nature has been filed**. On the other hand, if there be any adverse claim, protest or opposition, the same shall be filed within forty-five (45) days from the last date of publication/posting, with the Regional offices concerned, or through the Department's Community Environment and Natural Resources Officers (CENRO) or Provincial Environment and Natural Resources Officers (PENRO), to be filed at the Regional Office for resolution of the Panel of Arbitrators.** However, previously published valid and subsisting mining claims are exempted from posted/posting required under this Section.

No mineral agreement shall be approved unless the requirements under this section are fully complied with and any opposition/adverse claim is dealt with in writing by the Director and resolved by the Panel of Arbitrators. (Emphasis supplied.)

These provisions lead us to conclude that the power of the POA to resolve any adverse claim, opposition, or protest relative to mining rights under Sec. 77(a) of RA 7942 is confined only to adverse claims, conflicts and oppositions relating to **applications** for the grant of mineral rights. **POA's jurisdiction is confined only to resolutions of such adverse claims, conflicts and oppositions and it has no authority to approve or reject said applications. Such power is vested in the DENR Secretary upon recommendation of the MGB Director. Clearly, POA's jurisdiction over "disputes involving rights to mining**

Supreme Court E-Library

areas" has nothing to do with the cancellation of existing mineral agreements. (emphasis ours)

Accordingly, as we enunciated in *Celestial*, the POA unquestionably has jurisdiction to resolve disputes over MPSA applications subject of Redmont's petitions. However, said jurisdiction does not include either the approval or rejection of the MPSA applications, which is vested only upon the Secretary of the DENR. Thus, the finding of the POA, with respect to the rejection of petitioners' MPSA applications being that they are foreign corporation, is valid.

Justice Marvic Mario Victor F. Leonen, in his Dissent, asserts that it is the regular courts, not the POA, that has jurisdiction over the MPSA applications of petitioners.

This postulation is incorrect.

It is basic that the jurisdiction of the court is determined by the statute in force at the time of the commencement of the action.[54]

Sec. 19, *Batas Pambansa Blg. 129* or "The Judiciary Reorganization Act of 1980" reads:

Sec. 19. Jurisdiction in Civil Cases.—Regional Trial Courts shall exercise exclusive original jurisdiction:

1. In all civil actions in which the subject of the litigation is incapable of pecuniary estimation.

On the other hand, the jurisdiction of POA is unequivocal from Sec. 77 of RA 7942:

Section 77. Panel of Arbitrators.—

x x x Within thirty (30) days, after the submission of the case by the parties for the decision, the panel shall have exclusive and original jurisdiction to hear and decide the following:

(c) Disputes involving rights to mining areas

(d) Disputes involving mineral agreements or permits

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[54] *Lee, et al. v. Presiding Judge, et al.*, G.R. No. 68789, November 10, 1986; *People v. Paderna*, No. L-28518, January 29, 1968.

Supreme Court E-Library

It is clear that POA has exclusive and original jurisdiction over any and all disputes involving rights to mining areas. One such dispute is an MPSA application to which an adverse claim, protest or opposition is filed by another interested applicant. In the case at bar, the dispute arose or originated from MPSA applications where petitioners are asserting their rights to mining areas subject of their respective MPSA applications. Since respondent filed 3 separate petitions for the denial of said applications, then a controversy has developed between the parties and it is POA's jurisdiction to resolve said disputes.

Moreover, the jurisdiction of the RTC involves civil actions while what petitioners filed with the DENR Regional Office or any concerned DENRE or CENRO are MPSA applications. Thus POA has jurisdiction.

Furthermore, the POA has jurisdiction over the MPSA applications under the doctrine of primary jurisdiction. *Euro-med Laboratories v. Province of Batangas*[55] elucidates:

> The doctrine of primary jurisdiction holds that if a case is such that its determination requires the expertise, specialized training and knowledge of an administrative body, relief must first be obtained in an administrative proceeding before resort to the courts is had even if the matter may well be within their proper jurisdiction.

Whatever may be the decision of the POA will eventually reach the court system via a resort to the CA and to this Court as a last recourse.

Selling of MBMI's shares to DMCI

As stated before, petitioners' Manifestation and Submission dated October 19, 2012 would want us to declare the instant petition moot and academic due to the transfer and conveyance of all the shareholdings and interests of MBMI to DMCI, a corporation duly organized and existing under Philippine laws and is at least 60% Philippine-owned.[56] Petitioners reasoned

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[55] G.R. No. 148106, July 17, 2006.

[56] *Rollo*, p. 684.

Supreme Court E-Library

that they now cannot be considered as foreign-owned; the transfer of their shares supposedly cured the "defect" of their previous nationality. They claimed that their current FTAA contract with the State should stand since "even wholly-owned foreign corporations can enter into an FTAA with the State."[57] Petitioners stress that there should no longer be any issue left as regards their qualification to enter into FTAA contracts since they are qualified to engage in mining activities in the Philippines. Thus, whether the "grandfather rule" or the "control test" is used, the nationalities of petitioners cannot be doubted since it would pass both tests.

The sale of the MBMI shareholdings to DMCI does not have any bearing in the instant case and said fact should be disregarded. The manifestation can no longer be considered by us since it is being tackled in G.R. No. 202877 pending before this Court. Thus, the question of whether petitioners, allegedly a Philippine-owned corporation due to the sale of MBMI's shareholdings to DMCI, are allowed to enter into FTAAs with the State is a non-issue in this case.

In ending, the "control test" is still the prevailing mode of determining whether or not a corporation is a Filipino corporation, within the ambit of Sec. 2, Art. II of the 1987 Constitution, entitled to undertake the exploration, development and utilization of the natural resources of the Philippines. When in the mind of the Court there is doubt, based on the attendant facts and circumstances of the case, in the 60-40 Filipino-equity ownership in the corporation, then it may apply the "grandfather rule."

WHEREFORE, premises considered, the instant petition is **DENIED**. The assailed Court of Appeals Decision dated October 1, 2010 and Resolution dated February 15, 2011 are hereby **AFFIRMED**.

SO ORDERED.

Peralta, Abad, and *Mendoza, JJ.,* concur.

Leonen, J., see dissenting opinión.

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[57] *Id.* at 687.

Supreme Court E-Library

DISSENTING OPINION

LEONEN, *J.*:

Investments into our economy are deterred by interpretations of law that are not based on solid ground and sound rationale. Predictability in policy is a very strong factor in determining investor confidence.

The so-called "Grandfather Rule" has no statutory basis. It is the Control Test that governs in determining Filipino equity in corporations. It is this test that is provided in statute and by our most recent jurisprudence.

Furthermore, the Panel of Arbitrators created by the Philippine Mining Act is not a court of law. It cannot decide judicial questions with finality. This includes the determination of whether the capital of a corporation is owned or controlled by Filipino citizens. The Panel of Arbitrators renders arbitral awards. There is no dispute and, therefore, no competence for arbitration, if one of the parties does not have a mining claim but simply wishes to ask for a declaration that a corporation is not qualified to hold a mining agreement. Respondent here did not claim a better right to a mining agreement. By forum shopping through multiple actions, it sought to disqualify petitioners. The decision of the majority rewards such actions.

In this case, the majority's holding glosses over statutory provisions[1] and settled jurisprudence.[2]

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[1] Section 3 (a) of Republic Act No. 7042, as amended by Republic Act No. 8179, the Foreign Investments Act; Section 3 (aq) and (t) of Republic Act No. 7942, the Philippine Mining Act.

[2] *Gonzales v. Climax Mining Ltd.*, 492 Phil. 682 (2005) [Per *J.* Tinga, Second Division]; *Philex Mining Corp. v. Zaldivia*, 150 Phil. 547 (1972) [Per *J.* Reyes, J.B.L., *En Banc*]; *Gamboa v. Teves*, G.R. No. 176579, June 28, 2011, 652 SCRA 690 [Per *J.* Carpio, *En Banc*]; and *Heirs of Gamboa v. Teves*, G.R. No. 176579, October 9, 2012, 682 SCRA 397 [Per *J.* Carpio, *En Banc*].

Supreme Court E-Library

Thus, I disagree with the *ponencia* in relying on the Grandfather Rule. I disagree with the finding that petitioners Narra Nickel Mining and Development Corp. (Narra), Tesoro Mining and Development, Inc. (Tesoro), and McArthur Mining, Inc. (McArthur) are not Filipino corporations. Whether they should be qualified to hold Mineral Production Sharing Agreements (MPSA) should be the subject of proper proceedings in accordance with this opinion. I disagree that the Panel of Arbitrators (POA) of the Department of Environment and Natural Resources (DENR) has jurisdiction to disqualify an applicant for mining activities on the ground that it does not have the requisite Filipino ownership.

Furthermore, respondent Redmont Consolidated Mines Corp. (Redmont) has engaged in blatant forum shopping. The Court of Appeals[3] is in error for sustaining the POA. Thus, its findings that Narra, Tesoro, and McArthur are not qualified corporations must be rejected.

To recapitulate, Redmont took interest in undertaking mining activities in the Province of Palawan. Upon inquiry with the Department of Environment and Natural Resources, it discovered that Narra, Tesoro, and McArthur had standing MPSA applications for its interested areas.[4]

Narra, Tesoro, and McArthur are successors-in-interest of other corporations that have earlier pursued MPSA applications:

1. Narra intended to succeed Alpha Resources and Development Corporation and Patricia Louise Mining and Development Corporation (PLMDC), which held the application MPSA-IV-1-12 covering an area of 3,277 hectares in Barangay Calategas and Barangay San Isidro, Narra, Palawan;[5]

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[3] Seventh Division, Ayson , *J.*, *ponente* with Tolentino and Pizarro *JJ.*, concurring.

[4] *Rollo*, p. 67.

[5] *Id.* at 68.

Supreme Court E-Library

2. Tesoro intended to succeed Sara Marie Mining, Inc. (SMMI), which held the application MPSA-AMA-IVB-154 covering an area of 3,402 hectares in Barangay Malinao and Barangay Princess Urduja, Narra, Palawan;[6]

3. McArthur intended to succeed Madridejos Mining Corporation (MMC), which held the application MPSA-AMA-IVB-153 covering an area of more than 1,782 hectares in Barangay Sumbiling, Bataraza, Palawan and EPA-IVB-44 which includes a 3,720-hectare area in Barangay Malatagao, Bataraza, Palawan from SMMI.[7]

Contending that Narra, Tesoro, and McArthur are corporations whose foreign equity disqualifies them from entering into MPSAs, Redmont filed with the DENR Panel of Arbitrators (POA) for Region IV-B three (3) separate petitions for the denial of the MPSA applications of Narra, Tesoro, and McArthur. In these petitions, Redmont asserted that at least sixty percent (60%) of the capital stock of Narra, Tesoro, and McArthur are owned and controlled by MBMI Resources, Inc. (MBMI), a corporation wholly owned by Canadians.[8]

Narra, Tesoro, and McArthur countered that the POA did not have jurisdiction to rule on Redmont's petitions per Section 77 of Republic Act No. 7942, otherwise known as the Philippine Mining Act of 1995 (Mining Act). They also argued that Redmont did not have personality to sue as it had no pending application of its own over the areas in which they had pending applications. They contended that whether they were Filipino corporations has become immaterial as they were already pursuing applications for Financial or Technical Assistance Agreements (FTAA), which, unlike MPSAs, may be entered into by foreign corporations. They added that, in any case, they were qualified to enter into MPSAs as 60% of their capital is owned by Filipinos.[9]

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[6] *Id*.

[7] *Id*. at 67-68.

[8] *Id*. at 68-69.

[9] *Id*. at 69-71.

Supreme Court E-Library

In a December 14, 2007 resolution,[10] the POA held that Narra, Tesoro, and McArthur are foreign corporations disqualified from entering into MPSAs. The dispositive portion of this resolution reads:

> WHEREFORE, the Panel of Arbitrators finds the Respondents McArthur Mining Inc., Tesoro Mining and Development, Inc., and Narra Nickel Mining and Development Corp. as, DISQUALIFIED for being considered as Foreign Corporations. Their Mineral Production Sharing Agreement (MPSA) are hereby as [sic], they are DECLARED NULL AND VOID.
>
> Accordingly, the Exploration Permit Applications of Petitioner Redmont Consolidated Mines Corporation shall be GIVEN DUE COURSE, subject to compliance with the provisions of the Mining Law and its implementing rules and regulations.[11]

Narra, Tesoro, and McArthur then filed appeals before the Mines Adjudication Board (MAB). In a September 10, 2008 order,[12] the MAB pointed out that "no MPSA has so far been issued in favor of any of the parties";[13] thus, it faulted the POA for still ruling that "[t]heir Mineral Production Sharing Agreement (MPSA) are hereby as [sic], they are DECLARED NULL AND VOID."[14]

The MAB sustained the contention of Narra, Tesoro, and McArthur that "the Panel does not have jurisdiction over the instant case, and that it should have dismissed the Petition fortwith [sic]."[15] It emphasized that:

> [W]hether or not an applicant for an MPSA meets the qualifications imposed by law, more particularly the nationality requirement, is a matter that is addressed to the sound discretion

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[10] *Id*. at 131-140.

[11] *Id*. at 139-140.

[12] *Id*. at 191-202.

[13] *Id*. at 199-200.

[14] *Id*. at 191-202.

[15] *Id*. at 199.

Supreme Court E-Library

> of the competent body or agency, in this case the [Securities and Exchange Commission]. In the interest of orderly procedure and administrative efficiency, it is imperative that the DENR, including the Panel, accord full faith and confidence to the contents of Appellants' Articles of Incorporation, which have undergone thorough evaluation and scrutiny by the SEC. Unless the SEC or the courts promulgate a ruling to the effect that the Appellant corporations are not Filipino corporations, the Board cannot conclude otherwise. This proposition is borne out by the legal presumptions that official duty has been regularly performed, and that the law has been obeyed in the preparation and approval of said documents.[16]

Redmont then filed with the Court of Appeals a petition for review under Rule 43 of the 1997 Rules on Civil Procedure. This petition was docketed as CA-G.R. SP No. 109703.

In a decision dated October 1, 2010,[17] the Court of Appeals, through its Seventh Division, reversed the MAB and sustained the findings of the POA.[18]

The Court of Appeals noted that the "pivotal issue before the Court is whether or not respondents McArthur, Tesoro and Narra are Philippine nationals under Philippine laws, rules and regulations."[19] Noting that doubt existed as to their foreign equity ownerships, the Court of Appeals, Seventh Division, asserted that such equity ownerships must be reckoned via the Grandfather Rule.[20] Ultimately, it ruled that Narra, Tesoro, and McArthur "are not Philippine nationals, hence, their MPSA applications should be recommended for rejection by the Secretary of the DENR."[21]

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[16] *Id*. at 200-201.

[17] *Id*. at 66-96.

[18] *Id*. at 5-6.

[19] *Id*. at 80.

[20] *Id*. at 81.

[21] *Id*. at 91.

Supreme Court E-Library

On the matter of the Panel of Arbitrators' jurisdiction, the Court of Appeals, Seventh Division, referred to this court's declarations in *Celestial Nickel Mining Exploration Corp. v. Macroasia Corp.*[22] and considered these pronouncements as "clearly support[ing the conclusion] that the POA has jurisdiction to resolve the Petitions filed by x x x Redmont."[23]

The motion for reconsideration of Narra, Tesoro, and McArthur was denied by the Court of Appeals through a resolution dated February 15, 2011.[24]

Hence, this present petition was filed and docketed as G.R. No. 195580.

Apart from these proceedings before the POA, the MAB and the Court of Appeals, Redmont also filed three (3) separate actions before the Securities and Exchange Commission, the Regional Trial Court of Quezon City, and the Office of the President:

> ***First action:*** On August 14, 2008, Redmont filed a complaint for revocation of the certificates of registration of Narra, Tesoro, and McArthur with the Securities and Exchange Commission (SEC).[25] This complaint became the subject of another case (G.R. No. 205513), which was consolidated but later de-consolidated with the present petition, G.R. No. 195580.
>
> In view of this complaint, Redmont filed on September 1, 2008 a manifestation and motion to suspend proceeding[s] before the MAB.[26]
>
> In a letter-resolution dated September 3, 2009, the SEC's Compliance and Enforcement Department (CED) ruled in

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[22] 565 Phil. 466 (2007) [Per *J.* Velasco, Second Division].

[23] *Rollo*, p. 94.

[24] *Id*. at 97-113.

[25] *Id*. at 299-314.

[26] *Id*. at 72-73.

Supreme Court E-Library

favor of Narra, Tesoro, and McArthur. It applied the Control Test per Section 3 of Republic Act No. 7042, as amended by Republic Act No. 8179, the Foreign Investments Act (FIA), and held that Narra, Tesoro, and McArthur as well as their co-respondents in that case satisfied the requisite Filipino equity ownership.[27] Redmont then filed an appeal with the SEC *En Banc*.

In a decision dated March 25, 2010,[28] the SEC *En Banc* set aside the SEC-CED's letter-resolution with respect to Narra, Tesoro, and McArthur as the appeal from the MAB's September 10, 2008 order was then pending with the Court of Appeals, Seventh Division.[29] The SEC *En Banc* considered the assertion that Redmont has been engaging in forum shopping:

> It is evident from the foregoing that aside from identity of the parties x xx, the issue(s) raised in the CA Case and the factual foundations thereof x x x are substantially the same as those obtaining the case at bar. Yet, Redmont did not include this CA Case in the Certification Against Forum Shopping attached to the instant Appeal.[30]

However, with respect to the other respondent-appellees in that case (Sara Marie Mining, Inc., Patricia Louise Mining and Development Corp., Madridejos Mining Corp., Bethlehem Nickel Corp., San Juanico Nickel Corp., and MBMI Resources Inc.), the complaint was remanded to the SEC-CED for further proceedings with the reminder for it to "consider every piece already on record and, if necessary, to conduct further investigation in order to ascertain, **consistent with the**

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[27] SEC *En Banc* Case No. 09-09-177. Available at <http://www.sec.gov.ph/enbanc/decision/2010/mar2010/case%20no.%2009-09-177.pdf>

[28] *Id*.

[29] *Id*. at 13.

[30] *Id*. at 8.

Supreme Court E-Library

Grandfather Rule, the true, actual Filipino and foreign participation in each of these five (5) corporations."[31]

Asserting that the SEC *En Banc* had already made a definite finding that Redmont has been engaging in forum shopping, Sara Marie Mining, Inc., Patricia Louise Mining and Development Corp., and Madridejos Mining Corp. filed with the Court of Appeals a petition for review under Rule 43 of the 1997 Rules of Civil Procedure. This petition was docketed as CA-G.R. SP No. 113523.

In a decision dated May 23, 2012, the Court of Appeals, Former Tenth Division, found that "there was a deliberate attempt not to disclose the pendency of CA-GR SP No. 109703."[32] It concluded that "the partial dismissal of the case before the SEC is unwarranted. It should have been dismissed in its entirety and with prejudice to the complainant."[33] The dispositive portion of the decision reads:

> WHEREFORE, the Petition is GRANTED. The Decision dated March 25, 2010 of the Securities and Exchange Commission En Banc is REVERSED and SET ASIDE. Accordingly, the complaint for revocation filed by Redmont Consolidated Mines is **DISMISSED with prejudice**.[34] (Emphasis supplied)

On January 22, 2013, the Court of Appeals, Former Tenth Division, issued a resolution[35] denying Redmont's motion for reconsideration.

Aggrieved, Redmont filed the petition for review on *certiorari* which became the subject of G.R. No. 205513, initially lodged with this court's First Division. Through a November 27, 2013 resolution, G.R. No. 205513 was

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[31] *Id*.

[32] *Rollo* of G.R. No. 205513, p. 54.

[33] *Id*. at 55.

[34] *Id*. at 55-56.

[35] *Id*. at 58-60.

Supreme Court E-Library

consolidated with G.R. No. 195580. Subsequently however, this court's Third Division de-consolidated the two (2) cases.

Second Action: On September 8, 2008, Redmont filed a complaint for injunction (of the MAB proceedings pending the resolution of the complaint before the SEC) with application for issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction with the Regional Trial Court, Branch 92, Quezon City.[36] The Regional Trial Court issued a TRO on September 16, 2008. By then, however, the MAB had already ruled in favor of Narra, Tesoro, and McArthur.[37]

Third Action: On May 7, 2010, Redmont filed with the Office of the President a petition seeking the cancellation of the financial or technical assistance agreement (FTAA) applications of Narra, Tesoro, and McArthur. In a decision dated April 6, 2011,[38] the Office of the President ruled in favor of Redmont. In a resolution dated July 6, 2011,[39] the Office of the President denied the motion for reconsideration of Narra, Tesoro, and McArthur. As noted by the ponencia, Narra, Tesoro, and McArthur then filed an appeal with the Court of Appeals. As this appeal has been denied, they filed another appeal with this court, which appeal is pending in another division.[40]

The petition for review on *certiorari* subject of G.R. No. 195580 is an appeal from the Court of Appeals' October 1, 2010 decision in CA-G.R. SP No. 109703 reversing the MAB and sustaining the POA's findings that Narra, Tesoro, and McArthur are foreign corporations disqualified from entering into MPSAs. The petition also questions the February 15, 2011 resolution of the Court of Appeals denying the motion for reconsideration of Narra, Tesoro, and McArthur.

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[36] *Rollo*, p. 73.

[37] *Id*. at 76.

[38] *Id*. at 573-590.

[39] *Id*. at 591-594.

[40] *Ponencia*, p. 8.

Supreme Court E-Library

To reiterate, G.R. No. 195580 was consolidated with another petition – G.R. No. 205513 – through a resolution of this court dated November 27, 2013. G.R. No. 205513 is an appeal from the Court of Appeals, Former Tenth Division's May 23, 2012 decision and January 22, 2013 resolution in CA-G.R. SP No. 113523. Subsequently however, G.R. No. 195580 and G.R. No. 205513 were de-consolidated.

Apart from G.R. Nos. 195580 and 205513, a third petition has been filed with this court. This third petition is an offshoot of the petitions filed by Redmont with the Office of the President seeking the cancellation of the FTAA applications of Narra, Tesoro, and McArthur.

The main issue in this case relates to the ownership of capital in Narra, Tesoro, and McArthur, *i.e.*, whether they have satisfied the required Filipino equity ownership so as to be qualified to enter into MPSAs.

In addition to this, Narra, Tesoro, and McArthur raise procedural issues: (1) the POA's jurisdiction over the subject matter of Redmont's petitions; (2) the supposed mootness of Redmont's petitions before the POA considering that Narra, Tesoro, and McArthur have pursued applications for FTAAs; and (3) Redmont's supposed engagement in forum shopping.[41]

Governing laws

Mining is an environmentally sensitive activity that entails the exploration, development, and utilization of inalienable natural resources. It falls within the broad ambit of Article XII, Section 2 as well as other sections of the 1987 Constitution which refers to ancestral domains[42] and the environment.[43]

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[41] *Rollo*, pp. 20-21.

[42] 1987 CONST., Art. XII, Sec. 5, *et al*.

[43] 1987 CONST., Art. II, Sec. 16 as well as Art. XII, Sec. 6 (use of property as a social function).

Supreme Court E-Library

More specifically, Republic Act No. 7942 or the Philippine Mining Act, its implementing rules and regulations, other administrative issuances as well as jurisprudence govern the application for mining rights among others. Small-scale mining[44] is governed by Republic Act No. 7076, the People's Small-scale Mining Act of 1991. Apart from these, other statutes such as Republic Act No. 8371, the Indigenous Peoples Rights Act of 1997 (IPRA), and Republic Act No. 7160, the Local Government Code (LGC) contain provisions which delimit the conduct of mining activities.

Republic Act No. 7042, as amended by Republic Act No. 8179, the Foreign Investments Act (FIA) is significant with respect to the participation of foreign investors in nationalized economic activities such as mining. In the 2012 resolution ruling on the motion for reconsideration in *Gamboa v. Teves*,[45] this court stated that "The FIA is the basic law governing foreign investments in the Philippines, irrespective of the nature of business and area of investment."[46]

Commonwealth Act No. 108, as amended, otherwise known as the Anti-Dummy Law, penalizes those who "allow [their] name or citizenship to be used for the purpose of evading"[47] "constitutional or legal provisions requir[ing] Philippine or any other specific citizenship as a requisite for the exercise or enjoyment of a right, franchise or privilege".[48]

Batas Pambansa Blg. 68, the Corporation Code, is the general law that "provide[s] for the formation, organization, [and]

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[44] "[M]**ining activities which rely heavily on manual labor using simple implements and methods and do not use explosives or heavy mining equipment." Rep. Act No. 7076, Sec. 3 (b).**

[45] G.R. No. 176579, October 9, 2012, 682 SCRA 397 [Per *J.* Carpio, *En Banc*]

[46] *Id*. at 435.

[47] Commonwealth Act No. 108, as amended, Sec. 1.

[48] *Id*.

Supreme Court E-Library

regulation of private corporations."[49] The conduct of activities relating to securities, such as shares of stock, is regulated by Republic Act No. 8799, the Securities Regulation Code (SRC).

DENR's Panel of Arbitrators has no competence over the petitions filed by Redmont

The DENR Panel of Arbitrators does not have the competence to rule on the issue of whether the ownership of the capital of the corporations Narra, Tesoro, and McArthur meet the constitutional and statutory requirements. This alone is ample basis for granting the petition.

Section 77 of the Mining Act provides for the matters falling under the exclusive original jurisdiction of the DENR Panel of Arbitrators, as follows:

> Section 77. Panel of Arbitrators – x x x Within thirty (30) working days, after the submission of the case by the parties for decision, the panel shall have exclusive and original jurisdiction to hear and decide on the following:
>
> (a) Disputes involving rights to mining areas;
>
> (b) Disputes involving mineral agreements or permit;
>
> (c) Disputes involving surface owners, occupants and claimholders/concessionaires; and
>
> (d) Disputes pending before the Bureau and the Department at the date of the effectivity of this Act.

In 2007, this court's decision in *Celestial Nickel Mining Exploration Corporation v. Macroasia Corp.*[50] construed the phrase "disputes involving rights to mining areas" as referring "to any adverse claim, protest, or opposition to an application for mineral agreement."[51]

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[49] CONST., Art XII, Sec. 16.

[50] 565 Phil. 466 (2007) [Per *J.* Velasco, Jr., Second Division].

[51] *Id.* at 499.

Supreme Court E-Library

Proceeding from this court's statements in *Celestial*, the *ponencia* states:

> Accordingly, as We enunciated in *Celestial*, the POA unquestionably has jurisdiction to resolve disputes over MPSA applications subject of Redmont's petitions. However, said jurisdiction does not include either the approval or rejection of the MPSA applications which is vested only upon the Secretary of the DENR. Thus, the finding of the POA, with respect to the rejection of the petitioners' MPSA applications being that they are foreign corporation [sic], is valid.[52]

An earlier decision of this court, *Gonzales v. Climax Mining Ltd.*,[53] ruled on the jurisdiction of the Panel of Arbitrators as follows:

> We now come to the meat of the case which revolves mainly around the question of jurisdiction by the Panel of Arbitrators: Does the Panel of Arbitrators have jurisdiction over the complaint for declaration of nullity and/or termination of the subject contracts on the ground of fraud, oppression and **violation of the Constitution**? This issue may be distilled into the more basic question of whether the *Complaint* raises a mining dispute or a judicial question.
>
> **A judicial question is a question that is proper for determination by the courts, as opposed to a moot question or one properly decided by the executive or legislative branch**. A judicial question is raised when the determination of the question involves the exercise of a judicial function; that is, the question involves the determination of what the law is and what the legal rights of the parties are with respect to the matter in controversy.
>
> On the other hand, a mining dispute is a dispute involving (a) rights to mining areas, (b) mineral agreements, FTAAs, or permits, and (c) surface owners, occupants and claimholders/concessionaires. Under Republic Act No. 7942 (otherwise known as the Philippine Mining Act of 1995), the Panel of Arbitrators has exclusive and original jurisdiction to hear and decide these mining disputes. The Court of Appeals, in its questioned decision, correctly stated that ***the Panel's***

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[52] *Ponencia*, p. 28.

[53] 492 Phil. 682 (2005) [Per *J.* Tinga, Second Division].

Supreme Court E-Library

jurisdiction is limited only to those mining disputes which raise questions of fact or matters requiring the application of technological knowledge and experience.[54] (Emphasis supplied)

Moreover, this court's decision in *Philex Mining Corp. v. Zaldivia*,[55] which was also referred to in *Gonzales*, explained what "questions of fact" are appropriate for resolution in a mining dispute:

> We 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. The very terms of Section 73 of the Mining Law, as amended by Republic Act No. 4388, in requiring that the adverse claim must "state *in full detail the nature, boundaries* and *extent* of the adverse claim" show that the conflicts to be decided by reason of such adverse claim refer primarily to questions of fact. This is made even clearer by the explanatory note to House Bill No. 2522, later to become Republic Act 4388, that "Sections 61 and 73 that refer to the overlapping of claims are amended to expedite resolutions of mining conflicts * * *." **The controversies to be submitted and resolved by the Director of Mines under the sections refer therfore** [sic] **only to the overlapping of claims and administrative matters incidental thereto**.[56] (Emphasis supplied)

The pronouncements in *Celestial* cited by the *ponencia* were made to address the assertions of Celestial Nickel and Mining Corporation (Celestial Nickel) and Blue Ridge Mineral Corporation (Blue Ridge) that the Panel of Arbitrators had the power to cancel *existing* mineral agreements pursuant to Section 77 of the Mining Act.[57] Thus:

> Clearly, POA's jurisdiction over "disputes involving rights to mining areas" has nothing to do with the cancellation of existing mineral agreements.[58]

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[54] *Id*. at 692-693, citation omitted.

[55] 150 Phil. 547 (1972) [Per *J*. Reyes, J.B.L, *En Banc*].

[56] *Id*. at 553-554.

[57] *Celestial Nickel Mining Exploration Corporation v. Macroasia Corp.*, 565 Phil. 466, 499 (2007) [Per *J*. Velasco, Jr., Second Division].

[58] *Id*. at 501-502.

Supreme Court E-Library

These pronouncements did not undo or abandon the distinction, clarified in *Gonzales*, between judicial questions and mining disputes. The former are cognizable by regular courts of justice, while the latter are cognizable by the DENR Panel of Arbitrators.

As has been repeatedly acknowledged by the *ponencia*,[59] the Court of Appeals,[60] and the Mines Adjudication Board,[61] the present case, and the petitions filed by Redmont before the DENR Panel of Arbitrators boil down to the "pivotal issue x x x [of] whether or not [Narra, Tesoro, and McArthur] are Philippine nationals."

This is a matter that entails a consideration of the law. It is a question that relates to the status of Narra, Tesoro, and McArthur and the legal rights (or inhibitions) accruing to them on account of their status. This does not entail a consideration of the specifications of mining arrangements and operations. Thus, the petitions filed by Redmont before the DENR Panel of Arbitrators relate to judicial questions and not to mining disputes. They relate to matters which are beyond the jurisdiction of the Panel of Arbitrators.

Furthermore nowhere in Section 77 of the Republic Act No. 7942 is there a grant of jurisdiction to the Panel of Arbitrators over the determination of the qualification of applicants. The Philippine Mining Act clearly requires the existence of a "dispute" over a mining area,[62] a mining agreement,[63] with a surface owner,[64] or those pending with the Bureau or the Department[65] upon the law's promulgation. The existence of a "dispute" presupposes that the party bringing the suit has a colorable or

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[59] *Ponencia*, p. 12.

[60] *Rollo*, p. 80.

[61] *Id*. at 199.

[62] Rep. Act 7942, Sec. 77 (a).

[63] Rep. Act No. 7942, Sec. 77 (b).

[64] Rep. Act No. 7942, Sec. 77 (c).

[65] Rep. Act No. 7942, Sec. 77 (d).

Supreme Court E-Library

putative claim more superior than that of the respondent in the arbitration proceedings. After all, the Panel of Arbitrators is supposed to provide binding arbitration which should result in a binding award either in favor of the petitioner or the respondent. Thus, the Panel of Arbitrators is a qualified quasi-judicial agency. It does not perform all judicial functions in lieu of courts of law.

The petition brought by respondent before the Panel of Arbitrators *a quo* could not have resulted in any kind of award in its favor. It was asking for a judicial declaration at first instance of the qualification of the petitioners to hold mining agreements in accordance with the law. This clearly was beyond the jurisdiction of the Panel of Arbitrators and eventually also of the Mines Adjudication Board (MAB).

The remedy of Redmont should have been either to cause the cancellation of the registration of any of the petitioners with the Securities and Exchange Commission or to request for a determination of their qualifications with the Secretary of the Department of Environment and Natural Resources. Should either the Securities and Exchange Commission (SEC) or the Secretary of Environment and Natural Resources rule against its request, Redmont could have gone by *certiorari* to a Regional Trial Court.

Having brought their petitions to an entity without jurisdiction, the petition in this case should be granted.

Mining as a nationalized economic activity

The determination of who may engage in mining activities is grounded in the 1987 Constitution and the Mining Act.

Article XII, Section 2 of the 1987 Constitution reads:

> Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The

Supreme Court E-Library

exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. **The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least 60 per centum of whose capital is owned by such citizens**. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of waterpower, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish workers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution. (Emphasis supplied)

The requirement for nationalization should always be read in relation to Article II, Section 19 of the Constitution which reads:

Section 19. The State shall develop a self-reliant and independent national economy ***effectively controlled*** by Filipinos. (Emphasis supplied)

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Congress takes part in giving substantive meaning to the phrases "Filipino x x x corporations or associations at least 60 per centum of whose capital is owned by such citizens"[66] as well as the phrase "effectively controlled by Filipinos".[67] Like all constitutional text, the meanings of these phrases become more salient in context.

Thus, Section 3 (aq) of the Mining Act defines a "qualified person" as follows:

> Section 3. Definition of Terms. — As used in and for purposes of this Act, the following terms, whether in singular or plural, shall mean:
>
> x x x x x x x x x
>
> (aq) "Qualified person" means any citizen of the Philippines with capacity to contract, or a **corporation**, partnership, association, or cooperative organized or authorized for the purpose of engaging in mining, **with technical and financial capability to undertake mineral resources development and duly registered in accordance with law at least sixty per centum (60%) of the capital of which is owned by citizens of the Philippines**: Provided, That a legally organized *foreign-owned corporation* shall be deemed a qualified person for purposes of granting an exploration permit, financial or technical assistance agreement or mineral processing permit. (Emphasis supplied)

In addition, Section 3 (t) defines a "foreign-owned corporation" as follows:

> (t) "Foreign-owned corporation" means any corporation, partnerships, association, or cooperative duly registered in accordance with law in which less than fifty per centum (50%) of the capital is owned by Filipino citizens.

Under the Mining Act, nationality requirements are relevant for the following categories of mining contracts and permits: first, exploration permits (EP); second, mineral agreements (MA); third, financial or technical assistance agreements (FTAA); and fourth, mineral processing permits (MPP).

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[66] CONST., Art. XII, Sec. 2.

[67] CONST., Art. II, Sec. 19.

Supreme Court E-Library

In Section 20 of the Mining Act, "[a]n exploration permit grants the right to conduct exploration for all minerals in specified areas." Section 3 (q) defines exploration as the "searching or prospecting for mineral resources by geological, geochemical or geophysical surveys, remote sensing, test pitting, trenching, drilling, shaft sinking, tunneling or any other means for the purpose of determining the existence, extent, quantity and quality thereof and the feasibility of mining them for profit." DENR Administrative Order No. 2005-15 characterizes an exploration permit as the "initial mode of entry in mineral exploration."[68]

In Section 26 of the Mining Act, "[a] mineral agreement shall grant to the contractor the exclusive right to conduct mining operations and to extract all mineral resources found in the contract area."

There are three (3) forms of mineral agreements:

1. Mineral production sharing agreement (MPSA) "where the Government grants to the contractor the exclusive right to conduct mining operations within a contract area and shares in the gross output [with the] contractor x x x provid[ing] the financing, technology, management and personnel necessary for the implementation of [the MPSA]";[69]

2. Co-production agreement (CA) "wherein the Government shall provide inputs to the mining operations other than the mineral resource";[70] and

3. Joint-venture agreement (JVA) "where a joint-venture company is organized by the Government and the contractor with both parties having equity shares. Aside from earnings in equity, the Government shall be entitled to a share in the gross output".[71]

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[68] Sec. 17, DAO No. 2005-15.

[69] Rep. Act No. 7942, Sec. 26 (a).

[70] Rep. Act No. 7942, Sec. 26 (b).

[71] Rep. Act No. 7942, Sec. 26 (c).

Supreme Court E-Library

The second paragraph of Section 26 of the Mining Act allows a contractor "to convert his agreement into any of the modes of mineral agreements or financial or technical assistance agreement x x x."

Section 33 of the Mining Act allows "[a]ny qualified person with technical and financial capability to undertake large-scale exploration, development, and utilization of mineral resources in the Philippines" through a financial or technical assistance agreement.

In addition to Exploration Permits, Mineral Agreements, and FTAAs, the Mining Act allows for the grant of mineral processing permits (MPP) in order to "engage in the processing of minerals."[72] Section 3 (y) of the Mining Act defines mineral processing as "milling, beneficiation or upgrading of ores or minerals and rocks or by similar means to convert the same into marketable products."

Applying the definition of a "qualified person" in Section 3 (aq) of the Mining Act, a corporation which intends to enter into a Mining Agreement must have (1) "technical and financial capability to undertake mineral resources development" and (2) "duly registered in accordance with law at least sixty per centum (60%) of the capital of which is owned by citizens of the Philippines."[73] Clearly, the Department of Environment and Natural Resources, as an administrative body, determines technical and financial capability. The DENR, not the Panel of Arbitrators, is also mandated to determine whether the corporation is (a) duly registered in accordance with law and (b) at least "sixty percent of the capital" is "owned by citizens of the Philippines."

Limitations on foreign participation in certain economic activities are not new. Similar, though not identical, limitations are contained in the 1935 and 1973 Constitutions with respect to the exploration, development, and utilization of natural resources.

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[72] Rep. Act No. 7942, Sec. 55.

[73] Rep. Act No. 7942, Sec. 3 (aq).

Supreme Court E-Library

Article XII, Section 1 of the 1935 Constitution provides:

Section 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces or potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to **corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens,** subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant. (Emphasis supplied)

Likewise, Article XIV, Section 9 of the 1973 Constitution states:

Section 9. The disposition, exploration, development, of exploitation, or utilization of any of the natural resources of the Philippines shall be limited to citizens of the Philippines, or to **corporations or association at least sixty per centum of the capital of which is owned by such citizens**. The Batasang Pambansa, in the national interest, may allow such citizens, corporations, or associations to enter into service contracts for financial, technical, management, or other forms of assistance with any foreign person or entity for the exploitation, development, exploitation, or utilization of any of the natural resources. Existing valid and binding service contracts for financial, the technical, management, or other forms of assistance are hereby recognized as such. (Emphasis supplied)

The rationale for nationalizing the exploration, development, and utilization of natural resources was explained by this court in *Register of Deeds of Rizal v. Ung Siu Si Temple*[74] as follows:

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[74] 97 Phil. 58 (1955) [Per J. Reyes, J.B.L., *En Banc*].

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The purpose of the sixty per centum requirement is obviously to ensure that corporations or associations **allowed** to acquire agricultural land or **to exploit natural resources shall be controlled by Filipinos**; and the spirit of the Constitution demands that in the absence of capital stock, the controlling membership should be composed of Filipino citizens.[75] (Emphasis supplied)

On point are Dean Vicente Sinco's words, cited with approval by this court in *Republic v. Quasha*:[76]

It should be emphatically stated that the provisions of our Constitution which limit to Filipinos the rights to develop the natural resources and to operate the public utilities of the Philippines is one of the bulwarks of our national integrity. The Filipino people decided to include it in our Constitution in order that it may have the stability and permanency that its importance requires. It is written in our Constitution so that it may neither be the subject of barter nor be impaired in the give and take of politics. **With our natural resources, our sources of power and energy, our public lands, and our public utilities, the material basis of the nation's existence, in the hands of aliens over whom the Philippine Government does not have complete control, the Filipinos may soon find themselves deprived of their patrimony and living as it were, in a house that no longer belongs to them**.[77] (Emphasis supplied)

Article XII, Section 2 of the 1987 Constitution ensures the effectivity of the broad economic policy, spelled out in Article II, Section 19 of the 1987 Constitution, of "a self-reliant and independent national economy *effectively controlled* by Filipinos" and the collective aspiration articulated in the 1987 Constitution's Preamble of "conserv[ing] and develop[ing] our patrimony."

In this case, Narra, Tesoro, and McArthur are corporations of which a portion of their equity is owned by corporations and individuals acknowledged to be foreign nationals. Moreover, they have each sought to enter into a Mineral Production Sharing

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[75] *Id*. at 61.

[76] 150-B Phil. 140 (1972) [Per *J*. Reyes, J.B.L., *En Banc*].

[77] *Id*. at 170.

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Agreement (MPSA). This arrangement requires that foreigners own, at most, only 40% of the capital.

Notwithstanding that they have moved to obtain FTAAs — which are permitted for wholly owned foreign corporations — Redmont still asserts that Narra, Tesoro, and McArthur are in violation of the nationality requirements of the 1987 Constitution and of the Mining Act.[78]

Narra, Tesoro, and McArthur argue that the Grandfather Rule should not be applied as there is no legal basis for it. They assert that Section 3 (a) of the Foreign Investments Act (FIA) provides *exclusively* for the Control Test as the means for reckoning foreign equity in a corporation and, ultimately, the nationality of a corporation engaged in or seeking to engage in an activity with nationality restrictions. *They fault the Court of Appeals for relying on DOJ Opinion No. 20, series of 2005, a mere administrative issuance, as opposed to the Foreign Investments Act, a statute, for applying the Grandfather Rule.*[79]

Standards for reckoning foreign equity participation in nationalized economic activities

The broad and long-standing nationalization of certain sectors and industries notwithstanding, an apparent confusion has persisted as to how foreign equity holdings in a corporation engaged in a nationalized economic activity shall be reckoned. As have been proffered by the myriad cast of parties and adjudicative bodies involved in this case, there have been two means: the Control Test and the Grandfather Rule.

Paragraph 7 of the 1967 Rules of the Securities and Exchange Commission, dated February 28, 1967, states:

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[78] The case involving the FTAA but related to the current controversy was not consolidated with this case or with G.R. No. 205513.

[79] *Rollo*, pp. 29-43.

Supreme Court E-Library

Shares belonging to corporations or partnerships at least 60% of the capital of which is owned by Filipino citizens shall be considered as of Philippine nationality, but if the percentage of Filipino ownership in the corporation or partnership is less than 60%, only the number of shares corresponding to such percentage shall be counted as of Philippine nationality. Thus, if 100,000 shares are registered in the name of a corporation or partnership at least 60% of the capital stock or capital respectively, of which belong to a Filipino citizens, all of the said shares shall be recorded as owned by Filipinos. But if less than 60%, or, say, only 50% of the capital stock or capital of the corporation or partnership, respectively belongs to Filipino citizens, only 50,000 shares shall be counted as owned by Filipinos and the other 50,000 shares shall be recorded as belonging to aliens.[80]

Department of Justice (DOJ) Opinion No. 20, series of 2005, explains that the 1967 SEC Rules provide for the Control Test and the Grandfather Rule as the means for reckoning foreign and Filipino equity ownership in an "investee" corporation:

The above-quoted SEC Rules provide for the manner of calculating the Filipino interest in a corporation for purposes, among others of determining compliance with nationality requirements (the "Investee Corporation"). Such manner of computation is necessary since the shares of the Investee Corporation may be owned both by individual stockholders ("Investing Individuals") and by corporations and partnerships ("Investing Corporation"). The determination of nationality depending on the ownership of the Investee Corporation and in certain instances, the Investing Corporation.

Under the above-quoted SEC Rules, there are two cases in determining the nationality of the Investee Corporation. The first case is the 'liberal rule', later coined by the SEC as the Control Test in its 30 May 1990 Opinion, and pertains to the portion in said Paragraph 7 of the 1967 SEC Rules which states, '(s)hares belonging to corporations or partnerships at least 60% of the capital of which is owned by Filipino citizens shall be considered as of Philippine nationality.' Under the liberal Control Test, there is no need to further trace the ownership of the 60% (or more) Filipino stockholdings of the Investing Corporation since a corporation which is at least 60% Filipino-owned is considered as Filipino.

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[80] As quoted in DOJ Opinion No. 18, series of 1989.

Supreme Court E-Library

The second case is the Strict Rule or the Grandfather Rule Proper and pertains to the portion in said Paragraph 7 of the 1967 SEC Rules which states, 'but if the percentage of Filipino ownership in the corporation or partnership is less than 60%, only the number of shares corresponding to such percentage shall be counted as of Philippine nationality.' Under the Strict Rule or Grandfather Rule Proper, the combined totals in the Investing Corporation and the Investee Corporation must be traced (*i.e.*, 'grandfathered') to determine the total percentage of Filipino ownership.[81]

DOJ Opinion No. 20, series of 2005, then concluded as follows:

[T]he Grandfather Rule or the second part of the SEC Rule applies only when the 60-40 Filipino-foreign equity ownership is in doubt (*i.e.*, in cases where the joint venture corporation with Filipino and foreign stockholders with less than 60% Filipino stockholdings [or 59%] invests in another joint venture corporation which is either 60-40% Filipino-alien or 59% less Filipino. Stated differently, where the 60-40 Filipino-foreign equity ownership is not in doubt, the Grandfather Rule will not apply.[82] (Emphasis supplied)

The conclusion that the Grandfather Rule "applies only when the 60-40 Filipino-foreign equity ownership is ***in doubt***"[83] is borne by that opinion's consideration of an earlier DOJ opinion (i.e., DOJ Opinion No. 18, series of 1989). DOJ Opinion No. 20, series of 2005's quotation of DOJ Opinion No. 18, series of 1989, reads:

x x x. It is quite clear x x x that the "Grandfather Rule", which was evolved and applied by the SEC in several cases, will not apply in cases where the 60-40 Filipino-alien equity ownership in a particular natural resource corporation is not in doubt.[84]

A full quotation of the same portion of DOJ Opinion No. 18, series of 1989, reveals that the statement quoted above was made in a very specific context (*i.e.*, a prior DOJ opinion) that necessitated a clarification:

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[81] DOJ Opinion No. 20, series of 2005, p. 4.

[82] DOJ Opinion No. 20, series of 2005, p. 5.

[83] DOJ Opinion No. 20, series of 2005, p. 5.

[84] DOJ Opinion No. 20, series of 2005, p. 5.

Supreme Court E-Library

Opinion No. 84, s. 1988 cited in your query is not meant to overrule the aforesaid SEC rule.[85] There is nothing in said Opinion that precludes the application of the said SEC rule in appropriate cases. It is quite clear from said SEC rule that the 'Grandfather Rule', which was evolved and applied by the SEC in several cases, will not apply in cases where the 60-40 Filipino-alien equity ownership in a particular natural resource corporation is not in doubt.[86]

DOJ Opinion No. 18, series of 1989, addressed the query made by the Chairman of the Securities and Exchange Commission (SEC) "on whether or not it may give due course to the application for incorporation of Far Southeast Gold Resources Inc., (FSEGRI) to engage in mining activities in the Philippines in the light of [DOJ] Opinion No. 84, s. 1988 applying the so-called 'Grandfather Rule' x x x."[87]

DOJ Opinion No. 84, series of 1988, applied the Grandfather Rule. In doing so, it noted that the DOJ has been "informed that in the registration of corporations with the [SEC], compliance with the sixty per centum requirement is being monitored with the 'Grandfather Rule'"[88] and added that the Grandfather Rule is "applied specifically in cases where the corporation has corporate stockholders with alien stockholdings."[89]

Prior to applying the Grandfather Rule to the specific facts subject of the inquiry it addressed, DOJ Opinion No. 84, series of 1988, first cited the SEC's application of the Grandfather Rule in a May 30, 1987 opinion rendered by its Chair, Julio A. Sulit, Jr.[90]

This SEC opinion resolved the nationality of the investee corporation, Silahis International Hotel (Silahis). 31% of Silahis' capital stock was owned by Filipino stockholders, while 69%

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[85] Referring to paragraph 7 of the 1967 SEC Rules.

[86] DOJ Opinion No. 18, series of 1989, p. 2.

[87] DOJ Opinion No. 18, series of 1989, p. 1.

[88] DOJ Opinion No. 84, series of 1988, p. 3.

[89] DOJ Opinion No. 84, series of 1988, p. 3.

[90] SEC Opinion, May 4, 1987 addressed to Atty. Justiniano Ascano.

Supreme Court E-Library

was owned by Hotel Properties, Inc. (HPI). HPI, in turn, was 47% Filipino-owned and 53% alien-owned. Per the Grandfather Rule, the 47% indirect Filipino stockholding in Silahis through HPI combined with the 31% direct Filipino stockholding in Silahis translated to an aggregate 63.43% Filipino stockholding in Silahis, in excess of the requisite 60% Filipino stockholding required so as to be able to engage in a partly nationalized business.[91]

In noting that compliance with the 60% requirement has (thus far) been monitored by SEC through the Grandfather Rule and that the Grandfather Rule has been applied whenever a "corporation has corporate stockholders with alien stockholdings,"[92] DOJ Opinion No. 84, series of 1988, gave the impression that the Grandfather Rule is all-encompassing. Hence, the clarification in DOJ Opinion No. 18, series of 1989, that the Grandfather Rule "will not apply in cases where the 60-40 Filipino-alien equity ownership x x x is not in doubt."[93] This clarification was affirmed in DOJ Opinion No. 20, series of 2005, albeit rephrased positively as against DOJ Opinion No. 19, series of 1989's negative syntax (*i.e.*, "*not* in doubt"). Thus, DOJ Opinion No. 20, series of 2005, declared, that the Grandfather Rule "applies only when the 60-40 Filipino-foreign equity ownership is in doubt."[94]

Following DOJ Opinion No. 18, series of 1989, the SEC in its May 30, 1990 opinion addressed to Mr. Johnny M. Araneta stated:

> [T]the Commission *En Banc*, on the basis of the Opinion of the Department of Justice No. 18, S. 1989 dated January 19, 1989 voted and decided to **do away with the strict application/computation of the so-called "Grandfather Rule**" Re: Far Southeast Gold Resources, Inc. (FSEGRI), **and instead applied the so-called "Control Test"** method of determining corporate nationality.[95] (Emphasis supplied)

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[91] DOJ Opinion No. 84, series of 1988, pp. 3-4.

[92] DOJ Opinion No. 84, series of 1988, p. 3.

[93] DOJ Opinion No. 18, series of 1989.

[94] DOJ Opinion No. 20, series of 2005.

[95] SEC Opinion, May 30, 1990 Opinion addressed to Mr. Johnny M. Araneta,

Supreme Court E-Library

The SEC's May 30, 1990 opinion related to the ownership of shares in Jericho Mining Corporation (Jericho) which was then wholly owned by Filipinos. Two (2) corporations wanted to purchase a total of 60% of Jericho's authorized capital stock: 40% was to be purchased by Gold Field Asia Limited (GFAL), an Australian corporation, while 20% was to be purchased by Gold Field Philippines Corporation (GFPC). GFPC was itself partly foreign-owned. It was 60% Filipino-owned, while 40% of its equity was owned by Circular Quay Holdings, an Australian corporation.[96]

Applying the Control Test, the SEC's May 30, 1990 opinion concluded that:

> GFPC, which is 60% Filipino owned, is considered a Filipino company. Consequently, its investment in Jericho is considered that of a Filipino. The 60% Filipino equity requirement therefore would still be met by Jericho.
>
> Considering that under the proposed set-up Jericho's capital stock will be owned by 60% Filipino, it is still qualified to hold mining claims or rights or enter into mineral production sharing agreements with the Government.[97]

Some two years after DOJ Opinion No. 18, series of 2009, Republic Act No. 7042, otherwise known as the Foreign Investments Act (FIA), was enacted. Section 3 (a) of the Foreign Investments Act defines a "Philippine National" as follows:

> SEC. 3. Definitions. — As used in this Act:
>
> a) the term "Philippine National" shall mean a citizen of the Philippines or a domestic partnership or association wholly owned by citizens of the Philippines; or **a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines**

[96] SEC Opinion, May 30, 1990 Opinion addressed to Mr. Johnny M. Araneta.

[97] SEC Opinion, May 30, 1990 Opinion addressed to Mr. Johnny M. Araneta.

Supreme Court E-Library

> or a corporation organized abroad and registered as doing business in the Philippine under the Corporation Code of which one hundred percent (100%) of the capital stock outstanding and entitled to vote is wholly owned by Filipinos or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals: **Provided, That where a corporation and its non-Filipino stockholders own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stock outstanding and entitled to vote of each of both corporations must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors of each of both corporations must be citizens of the Philippines, in order that the corporation shall be considered a Philippine national**; (as amended by R.A. 8179). (Emphasis supplied)

Thus, under the Foreign Investments Act, a "Philippine national" is any of the following:

1. a citizen of the Philippines;
2. a domestic partnership or association wholly owned by citizens of the Philippines;
3. a corporation organized under the laws of the Philippines, of which at least 60% of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines;
4. a corporation organized abroad and registered as doing business in the Philippines under the Corporation Code, of which 100% of the capital stock outstanding and entitled to vote is wholly owned by Filipinos; or
5. a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least 60% of the fund will accrue to the benefit of Philippine nationals.

The National Economic and Development Authority (NEDA) formulated the implementing rules and regulations (IRR) of

Supreme Court E-Library

the Foreign Investments Act. Rule I, Section 1 (b) of these IRR reads:

RULE I
DEFINITIONS

SECTION 1. DEFINITION OF TERMS. — For the purposes of these Rules and Regulations:

x x x x x x x x x

b. Philippine national shall mean a citizen of the Philippines or a domestic partnership or association wholly owned by the citizens of the Philippines; or **a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines**; or a corporation organized abroad and registered as doing business in the Philippines under the Corporation Code of which 100% of the capital stock outstanding and entitled to vote is wholly owned by Filipinos; or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefits of the Philippine nationals; Provided, that where a corporation and its non-Filipino stockholders own stocks in Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stock outstanding and entitled to vote of each of both corporations must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors of each of both corporation must be citizens of the Philippines, in order that the corporation shall be considered a Philippine national. **The Control Test shall be applied for this purpose.**

Compliance with the required Filipino ownership of a corporation shall be determined on the basis of outstanding capital stock whether fully paid or not, but only such stocks which are generally entitled to vote are considered.

For stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. Full beneficial ownership of the stocks,

Supreme Court E-Library

> coupled with appropriate voting rights is essential. Thus, stocks, the voting rights of which have been assigned or transferred to aliens cannot be considered held by Philippine citizens or Philippine nationals.
>
> Individuals or juridical entities not meeting the aforementioned qualifications are considered as non-Philippine nationals. (Emphasis supplied)

The Foreign Investments Act's implementing rules and regulations are clear and unequivocal in declaring that the *Control Test* shall be applied to determine the nationality of a corporation in which another corporation owns stocks.

From around the time of the issuance of the SEC's May 30, 1990 opinion addressed to Mr. Johnny M. Araneta where the SEC stated that it "decided to do away with the strict application/ computation of the so-called 'Grandfather Rule' x x x, and instead appl[y] the so-called 'Control Test,'"[98] the SEC "has consistently applied the control test."[99] This is a matter expressly acknowledged by Justice Presbitero J. Velasco in his dissent in *Gamboa v. Teves*:[100]

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[98] SEC Opinion, May 30, 1990 Opinion addressed to Mr. Johnny M. Araneta.

[99] *Gamboa v. Teves*, G.R. No. 176579, June 28, 2011, 652 SCRA 690, 774 [Per *J.* Carpio, *En Banc*], *J.* Velasco, Jr., dissenting opinion.

[100] *Id.*, *citing* SEC Opinion dated November 6, 1989 addressed to Attys. Barbara Anne C. Migollos and Peter Dunnely A. Barot; SEC Opinion dated December 14, 1989 addressed to Atty. Maurice C. Nubla; SEC Opinion dated January 2, 1990 addressed to Atty. Eduardo F. Hernandez; SEC Opinion dated May 30, 1990 addressed to Gold Fields Philippines Corporation; SEC Opinion dated September 21, 1990 addressed to Carag, Caballes, Jamora, Rodriguez & Somera Law Offices; SEC Opinion dated March 23, 1993 addressed to Mr. Francis F. How; SEC Opinion dated April 14, 1993 addressed to Director Angeles T. Wong of the Philippine Overseas Employment Administration; SEC Opinion dated November 23, 1993 addressed to Mssrs. Dominador Almeda and Renato S. Calma; SEC Opinion dated December 7, 1993 addressed to Roco Bunag Kapunan Migallos & Jardaleza; SEC Opinion No. 49-04 dated December 22, 2004 addressed to Atty. Priscilla B. Valer; SEC Opinion No. 17-07 dated September 27, 2007 addressed to Mr. Reynaldo G. David; SEC Opinion No. 18-07 dated November 28, 2007 addressed to Mr. Rafael C. Bueno, Jr.; SEC-OGC

Supreme Court E-Library

It is settled that when the activity or business of a corporation falls within any of the partly nationalized provisions of the Constitution or a special law, *the "control test" must also be applied to determine the nationality of a corporation* on the basis of the nationality of the stockholders who control its equity.

The control test was laid down by the Department of Justice (DOJ) in its Opinion No. 18 dated January 19, 1989. It determines the nationality of a corporation with alien equity based on the percentage of capital owned by Filipino citizens. It reads:

> Shares belonging to corporations or partnerships at least 60% of the capital of which is owned by Filipino citizens shall be considered as Philippine nationality, but if the percentage of Filipino ownership in the corporation or partnership is less than 60% only the number of shares corresponding to such percentage shall be counted as of Philippine nationality.

In a catena of opinions, the SEC, "the government agency tasked with the statutory duty to enforce the nationality requirement prescribed in Section 11, Article XII of the Constitution on the ownership of public utilities," has consistently applied the control test.

The FIA likewise adheres to the control test. This intent is evident in the May 21, 1991 deliberations of the Bicameral Conference Committee (Committees on Economic Affairs of the Senate and House of Representatives), to wit:

> CHAIRMAN TEVES. x x x. On definition of terms, Ronnie, would you like anything to say here on the definition of terms of Philippine national?
>
> HON. RONALDO B. ZAMORA. I think we've – we have already agreed that we are adopting here the control test. Wasn't that the result of the –

Opinion No. 20-07 dated November 28, 2007 addressed to Atty. Amado M. Santiago, Jr., SEC-OGC Opinion No. 21-07 dated November 28, 2007 addressed to Atty. Navato Jr.; SEC-OGC Opinion No. 03-08 dated January 15, 2008 addressed to Attys. Ruby Rose J. Yusi and Rudyard S. Arbolado; SEC-OGC Opinion No. 09-09 dated April 28, 2009 addressed to Villaraza Cruz Marcelo Angangco; SEC-OGC Opinion No. 08-10 dated February 8, 2010 addressed to Mr. Teodoro B. Quijano; SEC-OGC Opinion No. 23-10 dated August 18, 2010 addressed to Attys. Teodulo G. San Juan, Jr. and Erdelyn C. Go.

Supreme Court E-Library

CHAIRMAN PATERNO. No. I thought that at the last meeting, I have made it clear that the Senate was not able to make a decision for or against the grandfather rule and the control test, because we had gone into caucus and we had voted but later on the agreement was rebutted and so we had to go back to adopting the wording in the present law which is not clearly, by its language, a control test formulation.

HON. ANGARA. Well, I don't know. Maybe I was absent, Ting, when that happened but my recollection is that we went into caucus, we debated [the] pros and cons of the control versus the grandfather rule and by actual vote the control test bloc won. I don't know when subsequent rejection took place, but anyway even if the – we are adopting the present language of the law I think by interpretation, administrative interpretation, while there may be some differences at the beginning, the current interpretation of this is the control test. It amounts to the control test.

CHAIRMAN TEVES. That's what I understood, that we could manifest our decision on the control test formula even if we adopt the wordings here by the Senate version.

x x x x x x x x x

CHAIRMAN PATERNO. The most we can do is to say that we have explained – is to say that although the House Panel wanted to adopt language which would make clear that the control test is the guiding philosophy in the definition of [a] Philippine national, we explained to them the situation in the Senate and said that we would be – was asked them to adopt the present wording of the law cognizant of the fact that the present administrative interpretation is the control test interpretation. But, you know, we cannot go beyond that.

MR. AZCUNA. May I be clarified as to that portion that was accepted by the Committee. [sic]

MR. VILLEGAS. The portion accepted by the Committee is the deletion of the phrase "voting stock or controlling interest."

This intent is even more apparent in the Implementing Rules and Regulations (IRR) of the FIA. In defining a "Philippine national," **Section 1(b) of the IRR of the FIA categorically states that for the purposes of determining the nationality of a corporation the control test should be applied**.

Supreme Court E-Library

The cardinal rule in the interpretation of laws is to ascertain and give effect to the intention of the legislator. Therefore, **the legislative intent to apply the control test in the determination of nationality must be given effect**.[101] (Emphasis supplied)

The Foreign Investments Act and its implementing rules notwithstanding, the Department of Justice, in DOJ Opinion No. 20, series of 2005, still posited that the Grandfather Rule is still applicable, albeit "only when the 60-40 Filipino-foreign equity ownership is in doubt."[102]

Anchoring itself on DOJ Opinion No. 20, series of 2005, the SEC *En Banc* found the *Grandfather Rule* applicable in its March 25, 2010 decision in *Redmont Consolidated Mines Corp. v. McArthur Mining Corp.* (subject of the petition in G.R. No. 205513).[103] It asserted that there was "doubt" in the compliance with the requisite 60-40 Filipino-foreign equity ownership:

Such doubt, we believe, exists in the instant case because the foreign investor, MBMI, provided practically all the funds of the remaining appellee-corporations.[104]

On December 9, 2010, the SEC Office of the General Counsel (OGC) rendered an opinion (SEC-OGC Opinion No. 10-31) effectively abandoning the Control Test in favor of the Grandfather Rule:

We are aware of the Commission's prevailing policy of applying the so-called "Control Test" in determining the extent of foreign equity in a corporation. Since the 1990s, the Commission *En Banc*, on the basis of DOJ Opinion No. 18, series of 1989 dated January 19, 1989, voted and decided to do away with the strict application/computation of the "Grandfather Rule," and instead applied the "Control Test" method of determining corporate nationality. x x x[105]

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[101] *Id*. at 774-777, citations omitted.

[102] DOJ Opinion No. 20, series of 2005, p. 5.

[103] SEC *En Banc* Case No. 09-09-177.

[104] SEC *En Banc* Case No. 09-09-177, p. 10.

[105] SEC-OGC Opinion No. 10-31, p. 8.

Supreme Court E-Library

However, we now opine that the Control Test must not be applied in determining if a corporation satisfies the Constitution's citizenship requirements in certain areas of activities. x x x.[106]

Central to the SEC-OGC's reasoning is a supposed distinction between Philippine "citizens" and Philippine "nationals". It emphasized that Article XII, Section 2 of the 1987 Constitution used the term "citizen" (*i.e.*, "corporations or associations at least 60 per centum of whose capital is owned by such *citizens*") and that this terminology was reiterated in Section 3 (aq) of the Mining Act (*i.e.*, "at least sixty per centum (60%) of the capital of which is owned by *citizens* of the Philippines").[107]

It added that the enumeration of who the citizens of the Philippines are in Article III, Section 1 of the 1987 Constitution is exclusive and that "only natural persons are susceptible of citizenship."[108]

Finding support in this court's ruling in the 1966 case of *Palting v. San Jose Petroleum*,[109] the SEC-OGC asserted that it was necessary to look into the "citizenship of the individual stockholders, *i.e.*, natural persons of [an] investor-corporation in order to determine if the [c]onstitutional and statutory restrictions are complied with."[110] Thus, "if there are layers of intervening corporations x x x we must delve into the citizenship of the individual stockholders of each corporation."[111] As the SEC-OGC emphasized, "[t]his is the strict application of the Grandfather Rule."[112]

Between the Grandfather Rule and the Control Test, the SEC-OGC opined that the framers of the 1987 Constitution

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[106] SEC-OGC Opinion No. 10-31, p. 9.

[107] SEC-OGC Opinion No. 10-31, pp. 3-4.

[108] SEC-OGC Opinion No. 10-31, p. 5.

[109] 125 Phil. 5 (1966) [Per *J.* Barrera, *En Banc*].

[110] SEC-OGC Opinion No. 10-31, p. 7.

[111] SEC-OGC Opinion No. 10-31, p. 7.

[112] SEC-OGC Opinion No. 10-31, p. 7.

Supreme Court E-Library

intended to apply the Grandfather Rule and that the Control Test ran counter to their intentions:

> Indeed, the framers of the Constitution intended for the "Grandfather Rule" to apply in case a 60%-40% Filipino-Foreign equity corporation invests in another corporation engaging in an activity where the Constitution restricts foreign participation.[113]
>
> x x x x x x x x x
>
> The Control Test creates a legal fiction where if 60% of the shares of an investing corporation are owned by Philippine citizens then all of the shares or 100% of that corporation's shares are considered Filipino owned for purposes of determining the extent of foreign equity in an investee corporation engaging in an activity restricted to Philippine citizens.[114]

The SEC-OGC reasoned that the invalidity of the Control Test rested on the matter of citizenship:

> In other words, **Philippine citizenship is being unduly attributed to foreign *individuals*** who own the rest of the shares in a 60% Filipino equity corporation investing in another corporation. Thus, applying the Control Test effectively circumvents the Constitutional mandate that corporations engaging in certain activities must be 60% owned by Filipino **citizens**. The words of the Constitution clearly provide that we must look at the citizenship of the individual/natural person who ultimately owns and controls the shares of stocks of the corporation engaging in the nationalized/partly-nationalized activity. This is what the framers of the constitution intended. In fact, the Mining Act strictly adheres to the text of the Constitution and does not provide for the application of the Control Test. Indeed, the application of the Control Test has no constitutional or statutory basis. Its application is only by mere administrative fiat.[115] (Emphasis supplied)

This court must now put to rest the seeming tension between the *Control Test* and the *Grandfather Rule*.

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[113] SEC-OGC Opinion No. 10-31, p. 7, *citing* J. BERNAS, *THE INTENT OF THE 1986 CONSTITUTION WRITERS* 813 (1995).

[114] SEC-OGC Opinion No. 10-31, p. 9.

[115] SEC-OGC Opinion No. 10-31, p. 9.

Supreme Court E-Library

This court's 1952 ruling in *Davis Winship v. Philippine Trust Co.*[116] cited its 1951 ruling in *Filipinas Compania de Seguros v. Christern, Huenefeld and Co., Inc.*[117] and stated that "the nationality of a private corporation is determined by the character or citizenship of its controlling stockholders."[118]

Filipinas Compania de Seguros, for its part, specifically used the term "Control Test" (citing a United States Supreme Court decision[119]) in ruling that the respondent in that case, Christern, Huenefeld and Co., Inc. – the majority of the stockholders of which were German subjects – "became an enemy corporation upon the outbreak of the war."[120]

Their pronouncements and clear reference to the Control Test notwithstanding, *Davis Winship* and *Filipinas Compania de Seguros* do not pertain to nationalized economic activities but rather to corporations deemed to be of a belligerent nationality during a time of war.

In and of itself, this court's 1966 decision in *Palting* had nothing to do with the Control Test and the Grandfather Rule. *Palting*, which was relied upon by SEC-OGC in Opinion No. 10-31, was promulgated in 1966, months before the 1967 SEC Rules and its bifurcated paragraph 7 were adopted.

Likewise, *Palting* was promulgated before Republic Act No. 5186, the Investments Incentive Act, was adopted in 1967. The Investments Incentive Act was adopted with the declared policy of "accelerat[ing] the sound development of the national economy in consonance with the principles and objectives of

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[116] 90 Phil. 744 (1952) [Per *J.* Paras, *En Banc*].

[117] 89 Phil. 54 (1951) [Per *C.J.* Paras, *En Banc*].

[118] *Davis Winship v. Philippine Trust Co.*, 90 Phil. 744, 747 (1952) [Per *J.* Paras, *En Banc*].

[119] *Clark v. Uebersee Finanz Korporation*, December 8, 1947, 92 Law. Ed. Advance Opinions, No. 4, pp. 148-153.

[120] *Filipinas Compania de Seguros v. Christern, Huenefeld and Co., Inc.*, 89 Phil. 54, 56 (1951) [Per *C.J.* Paras, *En Banc*].

Supreme Court E-Library

economic nationalism,"[121] thereby effecting the (1935) Constitution's nationalization objectives.

It was through the Investments Incentive Act that a definition of a "Philippine national" was established.[122] This definition has been practically reiterated in Presidential Decree No. 1789, the Omnibus Investments Code of 1981;[123] Executive

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[121] Rep. Act No. 5186, sec. 2.

[122] Sec. 3. *Definition of Terms.* For purposes of this Act:

x x x x x x x x x

(f) "Philippine National" shall mean a citizen of the Philippines; or a partnership or association wholly owned by citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least sixty per cent of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines; or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine National and at least sixty per cent of the fund will accrue to the benefit of Philippine Nationals: *Provided*, That where a corporation and its non-Filipino stockholders own stock in a registered enterprise, at least sixty per cent of the capital stock outstanding and entitled to vote of both corporations must be owned and held by the citizens of the Philippines and at least sixty per cent of the members of the Board of Directors of both corporations must be citizens of the Philippines in order that the corporation shall be considered a Philippine National.

[123] Art. 14. *"Philippine national"* shall mean a citizen of the Philippines; or a domestic partnership or association wholly owned by citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least sixty per cent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines; or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty per cent (60%) of the fund will accrue to the benefit of Philippine nationals: Provided, That where a corporation and its non-Filipino stockholders own stock in a registered enterprise, at least sixty per cent (60%) of the capital stock outstanding and entitled to vote of both corporations must be owned and held by the citizens of the Philippines and at least sixty per cent (60%) of the members of the Board of Directors of both corporations must be citizens of the Philippines in order that the corporation shall be considered a Philippine national.

Supreme Court E-Library

Order No. 226, the Omnibus Investments Code of 1987;[124] and the present Foreign Investments Act.[125]

This court's 2009 decision in *Unchuan v. Lozada*[126] referred to Section 3 (a) of the Foreign Investments Act defining "Philippine national." In so doing, this court may be characterized to have applied the Control Test:

> In this case, we find nothing to show that the sale between the sisters Lozada and their nephew Antonio violated the public policy prohibiting aliens from owning lands in the Philippines. Even as Dr. Lozada advanced the money for the payment of Antonio's share, at no point were the lots registered in Dr. Lozada's name. Nor was it contemplated that the lots be under his control for they are actually to be included as capital of Damasa Corporation. According to their agreement, Antonio and Dr. Lozada are to hold 60% and 40% of the shares in said corporation, respectively. **Under Republic Act No. 7042, particularly Section 3, a corporation organized under the laws of the Philippines of which at least 60% of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines, is considered a Philippine National.** As such, the corporation may

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[124] Art. 15. "Philippine national" shall mean a citizen of the Philippines or a diplomatic partnership or association wholly-owned by citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least sixty per cent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines; or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty per cent (60%) of the fund will accrue to the benefit of Philippine nationals: Provided, That where a registered and its non-Filipino stockholders own stock in a registered enterprise, at least sixty percent (60%) of the capital stock outstanding and entitled to vote of both corporations must be owned and held by the citizens of the Philippines and at least sixty per cent (60%) of the members of the Board of Directors of both corporations must be citizens of the Philippines in order that the corporation shall be considered a Philippine national.

[125] This court's October 9, 2012 resolution in *Gamboa v. Teves* (G.R. No. 176579, October 9, 2012, 682 SCRA 397 [Per *J*. Carpio, *En Banc*]) spoke of Executive Order No. 226, the Omnibus Investments Code of 1987 as the FIA's "predecessor statute" (*Id*. at 430-431).

[126] 603 Phil. 410 (2009) [Per *J*. Quisumbing, Second Division].

Supreme Court E-Library

acquire disposable lands in the Philippines. Neither did petitioner present proof to belie Antonio's capacity to pay for the lots subjects of this case.[127] (Emphasis supplied)

This court's 2011 decision in *Gamboa v. Teves*[128] also pertained to the reckoning of foreign equity ownership in a nationalized economic activity (i.e., public utilities). However, it centered on the definition of the term "capital"[129] which was deemed as referring "only to shares of stock entitled to vote in the election of directors."[130]

This court's 2012 resolution ruling on the motion for reconsideration in *Gamboa*[131] referred to the SEC *En Banc*'s March 25, 2010 decision in *Redmont Consolidated Mines Corp. v. McArthur Mining Corp.* (subject of G.R. No. 205513), which applied the Grandfather Rule:

This SEC *en banc* ruling conforms to our 28 June 2011 Decision that the 60-40 ownership requirement in favor of Filipino citizens in the Constitution to engage in certain economic activities applies not only to voting control of the corporation, but also to the beneficial ownership of the corporation.[132]

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[127] *Id.* at 431-432.

[128] G.R. No. 176579, June 28, 2011, 652 SCRA 690 [Per *J.* Carpio, *En Banc*].

[129] "[T]he Court shall confine the resolution of the instant controversy solely on the threshold and purely legal issue of whether the term "capital" in Section 11, Article XII of the Constitution refers to the total common shares only or to the total outstanding capital stock (combined total of common and non-voting preferred shares) of PLDT, a public utility." *Id.* at 705. "The crux of the controversy is the definition of the term "capital." Does the term "capital" in Section 11, Article XII of the Constitution refer to common shares or to total outstanding capital stock (combined total of common and non-voting shares)?" *Id.* at 717.

[130] *Id.* at 723 and 726.

[131] G.R. No. 176579, October 9, 2012, 682 SCRA 397 [Per *J.* Carpio, *En Banc*].

[132] *Id.* at 423.

Supreme Court E-Library

However, a reading of the original 2011 decision will reveal that the matter of beneficial ownership was considered after quoting the implementing rules and regulations of the Foreign Investments Act. The third paragraph of Rule I, Section 1 (b) of these rules states that "[f]ull beneficial ownership of the stocks, coupled with appropriate voting rights is essential." It is this same provision of the implementing rules which, in the first paragraph, declares that "the Control Test shall be applied x x x."

In any case, the 2012 resolution's reference to the SEC *En Banc*'s March 25, 2010 decision in *Redmont* can hardly be considered as authoritative. It is, at most, *obiter dictum*. In the first place, *Redmont* was evidently not the subject of *Gamboa*. It is the subject of G.R. No. 205513, which was consolidated, then de-consolidated, with the present petition. Likewise, the crux of *Gamboa* was the consideration of the kind/s of shares to which the term "capital" referred, not the applicability of the Control Test and/or the Grandfather Rule. Moreover, the 2012 resolution acknowledges that:

> [T]he opinions of the SEC *en banc*, as well as of the DOJ, interpreting the law are neither conclusive nor controlling and thus, do not bind the Court. It is hornbook doctrine that any interpretation of the law that administrative or quasi-judicial agencies make is only preliminary, never conclusive on the Court. The power to make a final interpretation of the law, in this case the term "capital" in Section 11, Article XII of the 1987 Constitution, lies with this Court, not with any other government entity.[133]

The Grandfather Rule is not enshrined in the Constitution

In ruling that the Grandfather Rule must apply, the ponencia relies on the deliberations of the 1986 Constitutional Commission. The ponencia states that these discussions "shed light on how a citizenship of a corporation will be determined."[134]

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[133] *Gamboa v. Teves*, G.R. No. 176579, October 9, 2012, 682 SCRA 397, 425 [Per *J*. Carpio, *En Banc*].

[134] *Ponencia*, p. 14.

Supreme Court E-Library

The ponencia cites an exchange between Commissioners Bernardo F. Villegas and Jose N. Nolledo:[135]

> MR. NOLLEDO: In Sections 3, 9 and 15, the Committee stated local or Filipino equity and foreign equity; namely, 60-40 in Section 3, 60-40 in Section 9, and 2/3-1/3 in Section 15.
>
> MR. VILLEGAS: That is right.
>
> MR. NOLLEDO: In teaching law, we are always faced with this question: "Where do we base the equity requirement, is it on the authorized capital stock, on the subscribed capital stock, or on the paid-up capital stock of a corporation"? Will the Committee please enlighten me on this?
>
> MR. VILLEGAS: We have just had a long discussion with the members of the team from the UP Law Center who provided us a draft. The phrase that is contained here which we adopted from the UP draft is "60 percent of voting stock."
>
> MR. NOLLEDO: That must be based on the subscribed capital stock, because unless declared delinquent, unpaid capital stock shall be entitled to vote.
>
> MR. VILLEGAS: That is right.
>
> MR. NOLLEDO: Thank you.
>
> With respect to an investment by one corporation in another corporation, say, a corporation with 60-40 percent equity invests in another corporation which is permitted by the Corporation Code, **does the Committee adopt the Grandfather Rule**?
>
> MR. VILLEGAS: **Yes, that is the understanding of the Committee**.
>
> MR. NOLLEDO: Therefore, we need additional Filipino capital?
>
> MR. VILLEGAS: Yes.[136] (Emphasis supplied)

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[135] The SEC *En Banc* decision in *Redmont* also cites this exchange to assert that "it was the intent of the framers of the 1987 Constitution to adopt the Grandfather Rule." *Redmont v. McArthur*, SEC *En Banc* Case No. 09-09-177, p. 12. Available at <http://www.sec.gov.ph/enbanc/decision/2010/mar2010/case%20no.%2009-09-177. pdf>

[136] Record of the Constitutional Commission of 1986, Proceedings and Debates, Vol. 3, pp. 255-256.

Supreme Court E-Library

This court has long settled the interpretative value of the deliberations of the Constitutional Commission. In *Civil Liberties Union v. Executive Secretary*,[137] this court noted:

A foolproof yardstick in constitutional construction is the intention underlying the provision under consideration. Thus, it has been held that the Court in construing a Constitution should bear in mind the object sought to be accomplished by its adoption, and the evils, if any, sought to be prevented or remedied. A doubtful provision will be examined in the light of the history of the times, and the condition and circumstances under which the Constitution was framed. The object is to ascertain the reason which induced the framers of the Constitution to enact the particular provision and the purpose sought to be accomplished thereby, in order to construe the whole as to make the words consonant to that reason and calculated to effect that purpose.[138]

However, in the same case, this court also said:[139]

While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. **Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. We think it safer to construe the constitution from what appears upon its face." The proper**

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[137] G.R. No. 83896, February 22, 1991, 194 SCRA 317 [Per *C.J.* Fernando, *En Banc*, JJ. Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Gancayco, Padilla, Bidin, Medialdea, Regalado, and Davide, Jr., concurring; J. Paras x x x concur because cabinet members like the members of the Supreme Court are not supermen; *JJ.* Sarmiento and Grino-Aquino, No part].

[138] *Id.* at 325.

[139] *Id.* at 337-338.

Supreme Court E-Library

interpretation therefore depends more on how it was understood by the people adopting it than in the framers's understanding thereof.[140] (Emphasis supplied)

As has been stated:

> The meaning of constitutional provisions should be determined from a contemporary reading of the text in relation to the other provisions of the entire document. We must assume that the authors intended the words to be read by generations who will have to live with the consequences of the provisions. The authors were not only the members of the Constitutional Commission but all those who participated in its ratification. Definitely, the ideas and opinions exchanged by a few of its commissioners should not be presumed to be the opinions of all of them. The result of the deliberations of the Commission resulted in a specific text, and it is that specific text—and only that text—which we must read and construe.
>
> The preamble establishes that the "sovereign Filipino people" continue to "ordain and promulgate" the Constitution. The principle that "sovereignty resides in the people and all government authority emanates from them" is not hollow. Sovereign authority cannot be undermined by the ideas of a few Constitutional Commissioners participating in a forum in 1986 as against the realities that our people have to face in the present.
>
> There is another, more fundamental, reason why reliance on the discussion of the Constitutional Commissioners should not be accepted as basis for determining the spirit behind constitutional provisions. The Constitutional Commissioners were not infallible. Their statements of fact or status or their inferences from such beliefs may be wrong. x x x.[141]

It is true that the records of the Constitutional Commission indicate an affirmative reference to the Grandfather Rule. However, the quoted exchange fails to indicate a consensus or the general sentiment of the forty-nine (49) members[142] of the

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[140] *Id*.

[141] *See* discussion in *J*. Leonen's dissenting opinion, *Imbong v. Ochoa*, G.R. No. 204819, April 8, 2014, p. 35, citations omitted.

[142] The fiftieth member, Commissioner Lino Brocka, resigned.

Supreme Court E-Library

Constitutional Commission. What it indicates is, at most, an understanding between Commissioners Nolledo and Villegas, albeit with the latter claiming that the same understanding is shared by the Constitutional Commission's Committee on National Economy and Patrimony. (Though even then, it is not established if this understanding is shared by the committee members unanimously, or by a majority of them, or is advanced by its leadership under the assumption that it may speak for the Committee.)

The 1987 Constitution is silent on the precise means through which foreign equity in a corporation shall be determined for the purpose of complying with nationalization requirements in each industry. If at all, it militates against the supposed preference for the Grandfather Rule that, its mention in the Constitutional Commission's deliberations notwithstanding, the 1987 Constitution was, ultimately, inarticulate on adopting a specific test or means.

The 1987 Constitution is categorical in its omission. Its meaning is clear. That is to say, by its silence, it chose to not manifest a preference. Had there been any such preference, the Constitution could very well have said it.

In 1986, when the Constitution was being drafted, the Grandfather Rule and the Control Test were not novel concepts. Both tests have been articulated since as far back as 1967. The Foreign Investments Act, while adopted in 1991, has "predecessor statute[s]"[143] dating to before 1986. As earlier mentioned, these predecessors also define the term "Philippine national" and in substantially the same manner that Section 3 (a) of the Foreign Investments Act does.[144] It is the same definition: This is the same basis for applying the Control Test.

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[143] Rep. Act No. 5186, the Investment Incentives Act; and Pres. Decree No. 1789, the Omnibus Investments Code of 1981 (also Exec. Order No. 226, the Omnibus Investments Code of 1987). See *Gamboa v. Teves* (G.R. No.176579, October 9, 2012, 682 SCRA 397, 430-431 [Per J. Carpio, *En Banc*]).

[144] SEC-OGC Opinion No. 10-31, p. 5; *Palting v. San Jose Petroleum*, G.R. No. L-14441, December 17, 1966, 18 SCRA 924 [Per J. Barrerra, *En Banc*]; SEC-OGC Opinion No. 10-31, p. 7.

Supreme Court E-Library

It is elementary that the Constitution is not primarily a lawyer's document.[145] As the convoluted history of the Control Test and Grandfather Rule shows, even those learned in the law have been in conflict, if not in outright confusion, as to their application. It is not proper to insist upon the Grandfather Rule as enshrined in the Constitution – and as manifesting the sovereign people's will – when the Constitution makes absolutely no mention of it.

In the final analysis, the records of the Constitutional Commission do not bind this court. As Charles P. Curtis, Jr. said on the role of history in constitutional exegesis:[146]

> The intention of the framers of the Constitution, even assuming we could discover what it was, when it is not adequately expressed in the Constitution, that is to say, what they meant when they did not say it, surely that has no binding force upon us. **If we look behind or beyond what they set down in the document, prying into what else they wrote and what they said, anything we may find is only advisory.** They may sit in at our councils. There is no reason why we should eavesdrop on theirs.[147] (Emphasis provided)

The Control Test is established by congressional dictum

The Foreign Investments Act addresses the gap. As this court has acknowledged, "[t]he FIA is the basic law governing foreign investments in the Philippines, irrespective of the nature of business and area of investment."[148]

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[145] *J.M. Tuason and Co., Inc. v. Land Tenure Administration*, G.R. No. L-21064, February 18, 1970, 31 SCRA 413 [Per *J.* Fernando, *En Banc*].

[146] C. P. CURTIS, *LIONS UNDER THE THRONE 2*, Houghton Mifflin (1947).

[147] See *J.* Mendoza, separate dissenting opinion, in *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, 412 Phil. 308, 363 (2001) [Per *J.* Panganiban, *En Banc*].

[148] *Gamboa v. Teves*, G.R. No. 176579, October 9, 2012, 682 SCRA 397, 435 [Per *J.* Carpio, *En Banc*].

Supreme Court E-Library

The Foreign Investments Act applies to nationalized economic activities under the Constitution. Section 8 of the Foreign Investments Act[149] provides that there shall be two (2) component

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[149] Sec. 8 List of Investment Areas Reserved to Philippine Nationals (ForeignInvestment Negative List). - The Foreign Investment Negative List shall have two (2) components lists; A, and B,

a) List A shall enumerate the areas of activities reserved to Philipine nationals by mandate of the Constitution and specific laws.

b) List B shall contain the areas of activities and enterprises regulated pursuant to law;

1) which are defense-related activities, requiring prior clearance and authorization from Department of National Defense (DND) to engage in such activity, such as the manufacture, repair, storage and/or distribution of firearms, ammunition, lethal weapons, military ordinance, explosives, pyrotechnics and similar materials; unless such manufacturing or repair activity is specifically authorized, with a substantial export component, to a non-Philippine national by the Secretaryof National Defense; or

2) which have implications on public health and morals, such as the manufacture and distribution of dangerous drugs; all forms of gambling; nightclubs, bars, beerhouses, dance halls; sauna and steam bathhouses and massage clinics.

"Small and medium-sized domestic market enterprises, with paid-in equity capital less than the equivalent two hundred thousand US dollars (USS200,000) are reserved to Philippine nationals, Provided that if:

(1) they involve and advanced technoloty as determined by the Department of Sciences and Technoloty or

(2) they employ at least fifty (50) direct employees, then a mininumpaid-in capital of one hundred thousand US dollars (USS100,000.00) shall be allowed to non-Philippine nationals.

Amendments to List B may be upon recommendation of the Secretary of National Defense, or the Secretary of Health, or the Secretary of Education, Culture and Sports, endorsed by the NEDA, approved by the President, and promulgated by a President Proclamation.

Transitory Foreign Investment Negative List" established in Sec. 15 hereof shall be replaced at the end of the transitory period by the first Regular Negative List to be formulated and recommended by NEDA, following the process and criteria provided in Sections 8 of this Act. The first Regular Negative List shall be published not later than sixty (60) days before the end of the transitory period provided in said section, and shall become immediately effective at the end of the transitory period. Subsequent Foreign Investment Negative Lists shall become effective fifteen (15) days after publication in a newspaper of general circulation in the Philippines: Provided,

Supreme Court E-Library

lists, A and B, with List A pertaining to "the areas of activities reserved to Philippine nationals by mandate of the Constitution and specific laws."

To reiterate, Section 3 (a) of the Foreign Investments Act defines a "Philippine national" as including "a corporation organized under the laws of the Philippines of which at least sixty per cent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines." This is a definition that is consistent with the first part of paragraph 7 of the 1967 SEC Rules, which, as proffered by DOJ Opinion No. 20, series of 2005, articulates the Control Test: "[s]hares belonging to corporations or partnerships at least 60 per cent of the capital of which is owned by Filipino citizens shall be considered as of Philippine nationality."

Moreover, the Foreign Investments Act admits of situations where a corporation invests in another corporation by owning shares of the latter. Thus, the proviso in Section 3 (a) of the Foreign Investments Act reads:

> Provided, That where a corporation and its non-Filipino stockholders own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stock outstanding and entitled to vote of each of both corporations must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors of each of both corporations must be citizens of the Philippines, in order that the corporation shall be considered a Philippine national[.]

Supplementing this is the last sentence of the first paragraph of Rule I, Section 1 (b) of the implementing rules and regulations of the Foreign Investments Act: "The Control Test shall be applied for this purpose."

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however, That each Foreign Investment Negative List shall be prospective in operation and shall in no way affect foreign investment existing on the date of its publication.

Amendments to List B after promulgation and publication of the first Regular Foreign Investment Negative List at the end of the transitory period shall not be made more often than once every two (2) years". (As amended by Rep. Act No. 8179)

Supreme Court E-Library

As such, by congressional dictum, which is properly interpreted by administrative rule making, the *Control Test* must govern in reckoning foreign equity ownership in corporations engaged in nationalized economic activities. It is through the Control Test that these corporations' *minimum* qualification to engage in nationalized economic activities adjudged.

DOJ Opinion No. 20, series of 2005, provides a qualifier, not a mere example

The *ponencia* states that "this case calls for the application of the grandfather rule since, x x x, doubt prevails and persists in the corporate ownership of herein petitioners."[150] This position is borne by the *ponencia*'s consideration of DOJ Opinion No. 20, series of 2005, which states:

> [T]he Grandfather Rule or the second part of the SEC Rule applies only when the 60-40 Filipino-foreign equity ownership is in doubt (***i.e.*, in cases where the joint venture corporation with Filipino and foreign stockholders with less than 60% Filipino stockholdings [or 59%] invests in another joint venture corporation which is either 60-40% Filipino-alien or 59% less Filipino**. Stated differently, where the 60-40 Filipino-foreign equity ownership is not in doubt, the Grandfather Rule will not apply.[151] (Emphasis supplied)

As is clear from the quoted portion of DOJ Opinion No. 20, series of 2005, the phrase "in doubt" is followed by a qualifying clause: "***i.e.***, in cases where the joint venture corporation with Filipino and foreign stockholders with less than 60% Filipino stockholdings [or 59%] invests in another joint venture corporation which is either 60-40% Filipino-alien or 59% less Filipino."

The *ponencia* states that this clause "only made an example of an instance where 'doubt' as to the ownership of a corporation exists"[152] and is, thus, not controlling.

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[150] *Ponencia*, p. 17.

[151] DOJ Opinion No. 20, series of 2005, p. 5.

[152] *Ponencia*, p. 17.

Supreme Court E-Library

This construction is erroneous. The abbreviation "*i.e.*" is an acronym for the Latin "*id est,*" which translates to "that is."[153] It is used not to cite an example but "to add explanatory information or to state something in different words."[154] Whatever follows "*i.e.*" is a paraphrasing or an alternative way of stating the word/s that preceded it. The words succeeding "*i.e.*", therefore, refer to the very conception of the words preceding "*i.e.*".

Had DOJ Opinion No. 20, series of 2005, intended to cite an example or to make an illustration, it should have instead used "*e.g.*" This stands for the Latin "*exempli gratia*", which translates to "for example."[155]

Thus, all that DOJ Opinion No. 20, series of 2005, meant was that "doubt" as to Filipino-foreign equity ownership exists when Filipino stockholdings is less than sixty percent (60%). Indeed, there is no doubt where Filipino stockholdings amount to at least sixty percent (60%). Pursuant to Section 3 (a) of the Foreign Investments Act, a corporation is then already deemed to be of Philippine nationality.

The Control Test serves the rationale for nationalizing the exploration, development, and utilization of natural resources

The application of the Control Test is by no means antithetical to the avowed policy of a "national economy effectively controlled by Filipinos."[156] The Control Test promotes this policy.

It is a matter of transitivity[157] that if Filipino stockholders control a corporation which, in turn, controls another corporation,

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[153] <http://www.merriam-webster.com/dictionary/id%20est>

[154] <http://www.oxforddictionaries.com/us/definition/american_english/*i.e.*>

[155] <http://www.merriam-webster.com/dictionary/e.g.>

[156] CONST., art. II, sec. 19.

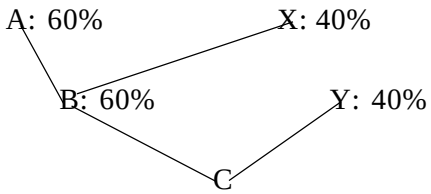
[157] *I.e.*, "([o]f a relation) such that, if it applies between successive members of a sequence, it must also apply between any two members taken

Supreme Court E-Library

then the Filipino stockholders control the latter corporation, albeit indirectly or through the former corporation.

An illustration is apt.

Suppose that a corporation, "C", is engaged in a nationalized activity requiring that 60% of its capital be owned by Filipinos and that this 60% is owned by another corporation, "B", while the remaining 40% is owned by stockholders, collectively referred to as "Y". Y is composed entirely of foreign nationals. As for B, 60% of its capital is owned by stockholders collectively referred to as "A", while the remaining 40% is owned by stockholders collectively referred to as "X". The collective A, is composed entirely of Philippine nationals, while the collective X is composed entirely of foreign nationals. (N.b., in this illustration, capital is understood to mean "shares of stock entitled to vote in the election of directors," per the definition in *Gamboa*[158]). Thus:



By owning 60% of B's capital, A controls B. Likewise, by owning 60% of C's capital, B controls C. From this, it follows, as a matter of transitivity, that A controls C; albeit indirectly, that is, through B.

This "control" holds true regardless of the aggregate foreign capital in B and C. As explained in *Gamboa*, control by stockholders is a matter resting on the ability to vote in the election of directors:

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in order. For instance, if A is larger than B, and B is larger than C, then A is larger than C." <http://www.oxforddictionaries.com/us/definition/american_english/transitive>

[158] *Gamboa v. Teves*, G.R. No. 176579, June 28, 2011, 652 SCRA 690, 723 and 726 [Per *J.* Carpio, *En Banc*].

Supreme Court E-Library

Indisputably, one of the rights of a stockholder is the right to participate in the control or management of the corporation. This is exercised through his vote in the election of directors because it is the board of directors that controls or manages the corporation.[159]

B will not be outvoted by Y in matters relating to C, while A will not be outvoted by X in matters relating to B. Since all actions taken by B must necessarily be in conformity with the will of A, anything that B does in relation to C is, in effect, in conformity with the will of A. No amount of aggregating the foreign capital in B and C will enable X to outvote A, nor Y to outvote B.

In effect, A controls C, through B. Stated otherwise, the collective Filipinos in A, *effectively* control C, through their control of B.

To reiterate, "[t]he purpose of the sixty per centum requirement is x x x to ensure that corporations x x x allowed to x x x exploit natural resources shall be controlled by Filipinos."[160] The decisive consideration is therefore control rather than plain ownership of capital.

The Grandfather Rule does not guarantee control and can undermine the rationale for nationalization

As against each other, it is the Control Test, rather than the Grandfather Rule, which better serves to ensure that Philippine nationals control a corporation.

As is illustrated by the SEC's September 21, 1990 opinion addressed to Carag, Caballes, Jamora, Rodriguez and Somera Law Offices, **the application of the Grandfather Rule does not guarantee control by Filipino stockholders**. In certain instances, the application of the Grandfather Rule actually

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[159] *Id.* at 725.

[160] *Register of Deeds of Rizal v. Ung Siu Si Temple*, 97 Phil. 58 (1955) [Per *J.* Reyes, J.B.L., *En Banc*].

Supreme Court E-Library

undermines the rationale (*i.e.*, control) for the nationalization of certain economic activities.

The SEC's September 21, 1990 opinion related to the nationality of a proposed corporation. Another corporation, Indo Phil Textile Mills, Inc. (Indo Phil), intended to subscribe to 70% of the proposed corporation's capital stock upon incorporation. The remainder (*i.e.*, 30%) of the proposed corporation's capital stock would have been subscribed to by Filipinos. For its part, Indo Phil was owned by foreign stockholders to the extent of 56%. Thus, it was only 44% Filipino-owned.

Applying the Grandfather Rule, the aggregate Filipino stockholdings in the proposed corporation was computed to amount to 60.8%. As such, the proposed corporation was deemed to be of Filipino nationality.

A consideration of the same case, with emphasis on the matter of "control" (and therefore in a manner more in keeping with the rationale for nationalization), should yield a different conclusion.

Considering that there is no indication in the SEC opinion that any of the shares in Indo Phil do not have voting rights, it must be assumed that all such shares have voting rights. As the foreign stockholdings in Indo Phil amount to 56%, control of Indo Phil is held by foreign nationals; that is, this 56% can outvote the 44% stockholding of Indo Phil's Filipino stockholders. Since control of the proposed corporation will rest on Indo Phil (which is to hold 70% of its capital), this control would ultimately rest on those who control Indo Phil; that is, its 56% foreign stockholding.

Had the Control Test been applied, Indo Phil would have, at the onset, been deemed to have failed to satisfy the requisite Filipino equity ownership, and its 70% stockholding in the proposed corporation would have been deemed not held by Philippine nationals. The Control Test would thus have averted an aberrant result where a corporation ultimately controlled by

Supreme Court E-Library

foreign nationals was deemed to have satisfied the requisite Filipino equity ownership.

The Control Test satisfies the beneficial ownership requirement

Apart from control (through voting rights), also significant is "beneficial ownership." In the 2011 decision in *Gamboa*,[161] this court stated:

> Mere legal title is insufficient to meet the 60 percent Filipino-owned "capital" required in the Constitution. Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is required. The legal and beneficial ownership of 60 percent of the outstanding capital stock must rest in the hands of Filipino nationals in accordance with the constitutional mandate. Otherwise, the corporation is "considered as non-Philippine national[s]."[162]

The concept of "beneficial ownership" is not novel. The implementing rules and regulations (amended 2004) of Republic Act No. 8799, the Securities Regulation Code (SRC), defines "beneficial owner or beneficial ownership" as follows:

SRC Rule 3 – Definition of Terms Used in the Rules and Regulations

1. As used in the rules and regulations adopted by the Commission under the Code, unless the context otherwise requires:

A. **Beneficial owner** or beneficial ownership **means any person who, directly *or indirectly***, through any contract, arrangement, understanding, relationship or otherwise, **has or shares voting power**, which includes the power to vote, or to direct the voting of such security; **and/or investment returns or power**, which includes the power to dispose of, or to direct the disposition of such security; **provided,**

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[161] *Gamboa v. Teves*, G.R. No. 176579, June 28, 2011, 652 SCRA 690 [Per *J.* Carpio, *En Banc*].

[162] *Id.* at 730.

Supreme Court E-Library

however, that a person shall be deemed to have an *indirect beneficial ownership* interest in any security which is:

i. held by members of his immediate family sharing the same household;

ii. held by a partnership in which he is a general partner;

iii. **held by a corporation of which he is a controlling shareholder**; or

iv. subject to any contract, arrangement or understanding which gives him voting power or investment power with respect to such securities; provided however, that the following persons or institutions shall not be deemed to be beneficial owners of securities held by them for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business, so long as such shares were acquired by such persons or institutions without the purpose or effect of changing or influencing control of the issuer:

a. a broker dealer;

b. an investment house registered under the Investment Houses Law;

c. a bank authorized to operate as such by the Bangko Sentral ng Pilipinas;

d. an insurance company subject to the supervision of the Office of the Insurance Commission;

e. an investment company registered under the Investment Company Act;

f. a pension plan subject to regulation and supervision by the Bureau of Internal Revenue and/or the Office of the Insurance Commission or relevant authority; and

g. a group in which all of the members are persons specified above.

All securities of the same class beneficially owned by a person, regardless of the form such beneficial ownership takes, shall be aggregated in calculating the number of shares beneficially owned by such person.

Supreme Court E-Library

A person shall be deemed to be the beneficial owner of a security if that person has the right to acquire beneficial ownership, within thirty (30) days, including, but not limited to, any right to acquire, through the exercise of any option, warrant or right; through the conversion of any security; pursuant to the power to revoke a trust, discretionary account or similar arrangement; or pursuant to automatic termination of a trust, discretionary account or similar arrangement. (Emphasis supplied)

Thus, there are two (2) ways through which one may be a beneficial owner of securities, such as shares of stock: first, by having or sharing voting power; and second, by having or sharing investment returns or power. By the implementing rules' use of "and/or", either of the two suffices. They are alternative means which may or may not concur.

Voting power, as discussed previously, ultimately rests on the controlling stockholders of the controlling investor corporation. To go back to the previous illustration, voting power ultimately rests on A, it having the voting power in B which, in turn, has the voting power in C.

As to investment returns or power, it is ultimately A which enjoys investment power. It controls B's investment decisions – including the disposition of securities held by B – and (again, through B) controls C's investment decisions.

Similarly, it is ultimately A which benefits from investment returns generated through C. Any income generated by C redounds to B's benefit, that is, through income obtained from C, B gains funds or assets which it can use either to finance itself in respect of capital and/or operations. This is a direct benefit to B, itself a Philippine national. This is also an indirect benefit to A, a collectivity of Philippine nationals, as then, its business – B – not only becomes more viable as a going concern but also becomes equipped to funnel income to A.

Moreover, beneficial ownership need not be direct. A controlling shareholder is deemed the indirect beneficial owner of securities (*e.g.*, shares) held by a corporation of which he or she is a controlling shareholder. Thus, in the previous illustration, A,

Supreme Court E-Library

the controlling shareholder of B, is the indirect beneficial owner of the shares in C to the extent that they are held by B.

Practical difficulties with the Grandfather Rule

Per SEC-OGC Opinion No. 10-31, the Grandfather Rule calls for the aggregation of stockholdings on the basis of the individual stockholders (*i.e.*, natural persons) of every investor corporation. This construction presents practical problems which, in many circumstances, render the reckoning of foreign equity a futile exercise.

It is a given that a corporation may hold shares in another corporation. Having to reckon equity to that point when natural persons hold rights to stocks makes it conceivable that stockholdings will have to be traced *ad infinitum*. The Grandfather Rule, as conceived in SEC-OGC Opinion No. 10-31, will never be satisfied for as long as there is a corporation holding the shares of another corporation.

This proposition is rendered even more difficult (and absurd) by how certain corporations are listed and traded in stock exchanges. In these cases, the ownership of stocks and the fractional composition of a corporation can change on a daily basis.

Even *Palting*, which SEC-OGC Opinion No. 10-31 relied upon to justify resort to the Grandfather Rule, acknowledged these impracticalities and absurdities:

> [T]o what extent must the word "indirectly" be carried? Must we trace the ownership or control of these various corporations *ad infinitum* for the purpose of determining whether the American ownership-control-requirement is satisfied? Add to this the admitted fact that the shares of stock of the PANTEPEC and PANCOASTAL which are allegedly owned or controlled *directly* by citizens of the United States, are traded in the stock exchange in New York, and you have a situation where it becomes a practical impossibility to determine at any given time, the citizenship of the controlling stock required by the law.[163]

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[163] *Palting v. San Jose Petroleum*, 125 Phil. 5, 19 (1966) [Per *J.* Barrera, *En Banc*].

Supreme Court E-Library

The Control Test is sustained by the Mining Act

The Foreign Investments Act's reckoning of a Philippine national on the basis of control and the requisite application of the Control Test are reinforced by the Mining Act.

Section 3 (aq) of the Mining Act deems as a qualified person (for purposes of a mineral agreement) a "corporation, x x x at least sixty per centum (60%) of the capital of which is owned by citizens of the Philippines." Insofar as the controlling equity requirement is concerned, this is practically a restatement of Section 3 (a) of the Foreign Investments Act.[164]

Moreover, Section 3 (t), by defining a "foreign-owned corporation" as a "corporation, x x x in which less than fifty per centum (50%) of the capital is owned by Filipino citizens" is merely stating Section 3 (aq)'s inverse. Section 3 (t) remains consistent with the Control Test, for after all, a corporation in which less than half of the capital is owned by Filipino could not possibly be controlled by Filipinos.

Sixty percent Filipino equity ownership is indispensable to be deemed a Philippine national

But what of corporations in which Filipino equity is greater than 50% but less than 60%?

The Foreign Investments Act is clear. The threshold to qualify as a Philippine national, whether as a stand-alone corporation or one involving investments from or by other corporation/s, is 60% Filipino equity ownership. Failing this, a corporation must be deemed to be of foreign nationality.

The necessary implication of Section 3 (a) of the FIA is that anything that fails to breach this 60% threshold is *not* a Philippine

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[164] "[T]he term "Philippine National" shall mean x x x a corporation x x x of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines."

Supreme Court E-Library

national. There is no "doubt", as DOJ Opinion No. 20, series of 2005, posits. Any declaration, in the Mining Act or elsewhere, that a corporation in which Filipino equity ownership is less than 50% is deemed foreign-owned is merely to articulate – so as to eliminate uncertainty – the natural consequence of Filipinos' minority shareholding in a corporation. Ultimately, the positive determination of what makes a Philippine national, per Section 3 (a) of the Foreign Investments Act, is that which controls.

The Grandfather Rule may be applied as a supplement to the Control Test

This standard under the Foreign Investments Act is the *Control Test*. Its application can be nuanced if there is a clear showing that the context of a case requires it. The Foreign Investments Act's standard should be applied with the end of achieving the rationale for nationalization. Thus, sixty percent equity ownership is *but a minimum*.

This court's conception of what constitutes control – as articulated in *Gamboa* – must be deemed integrated into the Foreign Investment Act's standard. Bare ownership of 60% of a corporation's shares would not suffice. What is necessary is such ownership as will ensure control of a corporation.

In *Gamboa*, "[f]ull beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is required."[165] ***With this in mind, the Grandfather Rule may be used as a supplement to the Control Test, that is, as a further check to ensure that control and beneficial ownership of a corporation is in fact lodged in Filipinos.***

For instance, Department of Justice Opinion No. 165, series of 1984, identified the following "significant indicators" or badges of "dummy status":

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[165] *Gamboa v. Teves*, G.R. No. 176579, June 28, 2011, 652 SCRA 690, 730 [Per *J.* Carpio, *En Banc*].

Supreme Court E-Library

1. That the foreign investor provides practically all the funds for the joint investment undertaken by Filipino businessmen and their foreign partner.
2. That the foreign investors undertake to provide practically all the technological support for the joint venture.
3. That the foreign investors, while being minority stockholders, manage the company and prepare all economic viability studies.[166]

In instances where methods are employed to disable Filipinos from exercising control and reaping the economic benefits of an enterprise, the ostensible control vested by ownership of 60% of a corporation's capital may be pierced. Then, the Grandfather Rule allows for a further, more exacting examination of who actually controls and benefits from holding such capital.

Narra, Tesoro, and McArthur ostensibly satisfy the minimum requirement of 60% Filipino equity holding

Turning now to Narra, Tesoro, and McArthur, a determination of their qualification to enter into MPSAs requires an examination of the structures of their respective stockholdings and controlling interests. This examination must remain consistent with the previously discussed requirements of effective control and beneficial ownership.

Consistent with *Gamboa*,[167] this examination of equity structures must likewise focus on "capital" understood as "shares of stock entitled to vote in the election of directors."[168]

Proceeding from the findings of the Court of Appeals in its October 1, 2010 decision in CA-G.R. SP No. 109703,[169] it appears

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[166] DOJ Opinion No. 165, series of 1984, p. 5.

[167] G.R. No. 176579, June 28, 2011, 652 SCRA 690 [Per *J*. Carpio, *En Banc*].

[168] *Id*. at 723 and 726.

[169] *Rollo*, pp. 66-96.

Supreme Court E-Library

that at least 60% of equities in Narra, Tesoro, and McArthur is owned by Philippine nationals. Per this initial analysis, Narra, Tesoro, and McArthur ostensibly satisfy the requirements of the Control Test in order that they may be deemed Filipino corporations.

Attention must be drawn to how these findings fail to indicate which (fractional) portion of these equities consist of "shares of stock entitled to vote in the election of directors" or, if there is even any such portion of shares which are not entitled to vote. These findings fail to indicate any distinction between common shares and preferred shares (not entitled to vote). Absent a basis for reckoning non-voting shares, there is, thus, no basis for diminishing the 60% Filipino equity holding in Narra, Tesoro, and McArthur and undermining their having ostensibly satisfied the requirements of the Control Test in order to be deemed Filipino corporations qualified to enter into MPSAs

1. Narra Nickel Mining and Development Corporation

Petitioner Narra Nickel Mining and Development Corporation has ₱10 Million in capital stock, divided into 10,000 shares at ₱1,000.00 per share, subscribed to as follows:[170]

Name	Nationality	Number of Shares	Amount Subscribed	Amount Paid
Patricia Louise Mining and Development Corp.	Filipino	5,997	₱5,997,000.00	₱1,667,000.00
MBMI Resources, Inc.	Canadian	3,996	₱3,996,000.00	₱1,116,000.00
Higinio C. Mendoza, Jr.	Filipino	1	₱ 1,000.00	₱ 1,000.00
Henry E. Fernandez	Filipino	1	₱ 1,000.00	₱ 1,000.00
Ma. Elena A. Bocalan	Filipino	1	₱ 1,000.00	₱ 1,000.00
Michael T. Mason	American	1	₱ 1,000.00	₱ 1,000.00
Robert L. McCurdy	Canadian	1	₱ 1,000.00	₱ 1,000.00

[170] *Id.* at 86.

Supreme Court E-Library

Manuel A. Agcaoili	Filipino	1	₱ 1,000.00	₱ 1,000.00
Bayani H. Agabin	Filipino	10,000	₱ 1,000.00	₱ 1,000.00
	Total		₱ 10,000,000.00	₱ 2,800,000.00

Patricia Louise Mining and Development Corporation (PLMDC) also has ₱10 Million in capital stock, divided into 10,000 shares at ₱1,000.00 per share, subscribed to as follows:[171]

Name	Nationality	Number of shares	Amount Subscribed	Amount Paid
Palawan Alpha South Resource Development Corp.	Filipino	6,596	₱ 3,396,000.00	₱ 0
MBMI Resources, Inc.	Canadian	3,396	₱ 6,596,000.00	₱ 2,796,000.00
Higinio C. Mendoza, Jr.	Filipino	1	₱ 1,000.00	₱ 1,000.00
Fernando B. Esguerra	Filipino	1	₱ 1,000.00	₱ 1,000.00
Henry E. Fernandez	Filipino	1	₱ 1,000.00	₱ 1,000.00
Lauro L. Salazar	Filipino	1	₱ 1,000.00	₱ 1,000.00
Michael T. Mason	American	1	₱ 1,000.00	₱ 1,000.00
Kenneth Cawkel	Canadian	1	₱ 1,000.00	₱ 1,000.00
Manuel A. Agcaoili	Filipino	1	₱ 1,000.00	₱ 1,000.00
Bayani H. Agabin	Filipino	10,000	₱ 1,000.00	₱ 1,000.00
	Total		₱ 10,000,000.00	₱ 2,804,000.00

Palawan Alpha South Resource and Development Corporation, a Filipino corporation, along with Higinio C. Mendoza, Jr., Fernando B. Esguerra, Henry E. Fernandez, Lauro L. Salazar, Manuel A. Agcaoili, and Bayani H. Agabin, who are all Filipinos, collectively own 6,002 shares in or 60.02% of the capital stock

[171] *Id*. at 86-87.

Supreme Court E-Library

of PLMDC. PLMDC is thus *ostensibly* a Filipino corporation (*i.e.*, it is controlled by Philippine nationals who own more than 60% of its capital as required by Section 3 (a) of the Foreign Investments Act).

PLMDC, along with Higinio C. Mendoza, Jr., Henry E. Fernandez, Ma. Elena A. Bocalan, Manuel A. Agcaoili and Bayani H. Agabin, who are all Filipinos, collectively own 6,002 shares in or 60.02% of the capital stock of Narra. As Narra has satisfied the minimum Filipino equity ownership (*i.e.*, 60%) required by Section 3 (a) of the Foreign Investments Act, it is ostensibly a Filipino corporation. Moreover, as it has satisfied the minimum Filipino equity ownership (*i.e.*, 60%) required by Section 3 (aq) of the Mining Act to be deemed a qualified person for purposes of mineral agreements, Narra is ostensibly qualified to enter into an MPSA.

2. Tesoro Mining and Development, Inc.

Petitioner Tesoro Mining and Development, Inc. has ₱10 Million in capital stock, divided into 10,000 shares at ₱ 1,000.00 per share, subscribed to as follows:[172]

Name	Nationality	Number of Shares	Amount Subscribed	Amount Paid
Sara Marie Mining, Inc.	Filipino	5,997	₱5,997,000.00	₱825,000.00
MBMI Resources, Inc.	Canadian	3,998	₱3,998,000.00	₱1,878,174.60
Lauro L. Salazar	Filipino	1	₱1,000.00	₱1,000.00
Fernando B. Esguerra	Filipino	1	₱1,000.00	₱1,000.00
Manuel A. Agcaoili	Filipino	1	₱1,000.00	₱1,000.00
Michael T. Mason	American	1	₱1,000.00	₱1,000.00
Kenneth Cawkel	Canadian	1	₱1,000.00	₱1,000.00
	Total	10,000	₱10,000,000.00	₱2,708,174.60

[172] *Id*. at 84.

Supreme Court E-Library

Sara Marie Mining, Inc. (SMMI) also has P 10 Million in capital stock, divided into 10,000 shares at P 1,000.00 per share, subscribed to as follows:[173]

Name	Nationality	Number of shares	Amount Subscribed	Amount Paid
Olympic Mines and Development Corp.	Filipino	6,663	P6,663,000.00	P0
MBMI Resources, Inc.	Canadian	3,331	P3,331,000.00	₱2,749,000.00
Amante Limsun	Filipino	1	₱1,000.00	P1,000.00
Fernando B. Esguerra	Filipino	1	₱1,000.00	₱1,000.00
Lauro Salazar	Filipino	1	₱1,000.00	₱1,000.00
Emmanuel G. Hernando	Filipino	1	₱1,000.00	₱1,000.00
Michael T. Mason	American	1	₱1,000.00	₱1,000.00
KennethCawkel	Canadian	1	₱1,000.00	₱1,000.00
	Total	10,000	₱10,000,000.00	₱2,809,900.00

Olympic Mines and Development Corporation (OMDC), a Filipino corporation, along with Amanti Limson, Fernando B. Esguerra, Lauro Salazar, and Emmanuel G. Hernando, who are all Filipinos, collectively own 6,667 shares in or 66.67% of the capital stock of SMMI. SMMI is thus *ostensibly* a Filipino corporation (*i.e.*, it is controlled by Philippine nationals who own more than 60% of its capital as required by Section 3 (a) of the Foreign Investments Act).

SMMI, along with Lauro L. Salazar, Fernando B. Esguerra, and Manuel A. Agcaoili, who are all Filipinos, collectively own 6,000 shares in or 60% of the capital stock of Tesoro. As Tesoro has satisfied the minimum Filipino equity ownership (*i.e.*, 60%) required by Section 3 (a) of the Foreign Investments Act, it is ostensibly a Filipino corporation. Moreover, as it has satisfied the minimum Filipino equity ownership (*i.e.*, 60%) required by

[173] *Id.* at 84-85.

Supreme Court E-Library

Section 3 (aq) of the Mining Act to be deemed a qualified person for purposes of mineral agreements, Tesoro is ostensibly qualified to enter into an MPSA.

3. McArthur Mining Corporation

Petitioner McArthur Mining Corporation has ₱ 10 Million in capital stock, divided into 10,000 shares at ₱ 1,000.00 per share, subscribed to as follows:[174]

Name	Nationality	Number of Shares	Amount Paid	Amount Subscribed
Madridejos Mining Corp.	Filipino	5,997	₱5,997,000.00	₱825,000.00
MBMI Resources, Inc.	Canadian	3,998	₱3,998,000.00	₱1,878,174.60
Lauro L. Salazar	Filipino	1	₱1,000.00	₱1,000.00
Fernando B. Esguerra	Filipino	1	₱1,000.00	₱1,000.00
Manuel A. Agcaoili	Filipino	1	₱1,000.00	₱1,000.00
Michael T. Mason	American	1	₱1,000.00	₱1,000.00
Kenneth Cawkel	Canadian	1	₱1,000.00	₱1,000.00
	Total	10,000	₱10,000,000.00	₱2,708,174.60

Madridejos Mining Corporation (Madridejos) also has P 10 Million in capital stock, divided into 10,000 shares at p 1,000.00 per shares, subscribed to as follows:[175]

Name	Nationality	Number of Shares	Amount Subscribed	Amount Paid
Olympic Mines and Development Corp.	Filipino	6,663	₱6,663,000.00	₱ 0
MBMI Resources, Inc.	Canadian	3,331	₱3,331,000.00	₱2,809,900.00
Amanti Limson	Filipino	1	₱1,000.00	₱1,000.00
Fernando B. Esguerra	Filipino	1	₱1,000.00	₱1,000.00

[174] *Id.* at 82.

[175] *Id.* at 82-83.

Supreme Court E-Library

Lauro Salazar	Filipino	1	₱1,000.00	₱1,000.00
Emmanuel G. Hernando	American	1	₱1,000.00	₱1,000.00
Michael T. Mason	Canadian	1	₱1,000.00	₱1,000.00
Kenneth Cawkel	Total	1	₱1,000.00	₱1,000.00
		10,000	₱10,000,000.00	₱2,809,900.00

OMDC, a Filipino corporation, combined with Amanti Limson, Fernando B. Esguerra, Lauro Salazar, and Emmanuel G. Hernando, who are all Filipino, collectively own 6,667 shares in or 66.67% of the capital stock of Madridejos. Madridejos is thus *ostensibly* a Filipino corporation (*i.e.*, it is controlled by Philippine nationals who own more than 60% of its capital as required by Section 3 (a) of the Foreign Investments Act).

Madridejos combined with Lauro L. Salazar, Fernando B. Esguerra, and Manuel A. Agcaoili, who are all Filipinos, collectively own 6,000 shares in or 60% of the capital stock of McArthur. As McArthur has satisfied the minimum Filipino equity ownership (*i.e.*, 60%) required by Section 3 (a) of the Foreign Investments Act, it is ostensibly a Filipino corporation. Moreover, as it has satisfied the minimum Filipino equity ownership (*i.e.*, 60%) required by Section 3 (aq) of the Mining Act to be deemed a qualified person for purposes of mineral agreements, McArthur is ostensibly qualified to enter into an MPSA.

In its October 1, 2010 decision, the Court of Appeals, Seventh Division, made much of a joint venture entered into by the Canadian Corporation, MBMI Resources Inc. with OMDC.[176] This joint venture was denominated "Olympic Properties." Per MBMI's 2006 Annual report, MBMI was noted to hold "directly and indirectly an initial 60% interest in [Olympic Properties]."[177] This joint venture, however, does not factor into the respective stockholders' genealogies of Tesoro and McArthur. It is an independent venture entered into by OMDC with MBMI. It is OMDC, and not Olympic Properties, which owns shares in

[176] *Id*. at 83.

[177] *Id*.

Supreme Court E-Library

Tesoro and McArthur. It is, therefore, of no consequence that MBMI holds a 60% interest in Olympic Properties.

Having made these observations, it should not be discounted that a more thorough consideration – as has been intimated in the earlier disquisition regarding how 60% Filipino equity ownership is but a minimum and how the Grandfather Rule may be applied to further examine actual Filipino ownership – could yield an entirely different conclusion. In fact, Redmont has asserted that such a situation avails.

However, the contingencies of this case must restrain the court's consideration of Redmont's claims. Redmont sought relief from a body without jurisdiction – the Panel of Arbitrators – and has engaged in blatant forum shopping. It has taken liberties with and ran amok of rules that define fair play. It is, therefore, bound by its lapses and indiscretions and must bear the consequences of its imprudence.

Redmont has been engaged in blatant forum shopping

The concept of and rationale against forum shopping was explained by this court in *Top Rate Construction and General Services, Inc. v. Paxton Development Corporation*:[178]

> Forum shopping is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the **same or *related* causes or to grant the same or *substantially the same* reliefs**, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action. It is an act of malpractice for it trifles with the courts, abuses their processes, degrades the administration of justice and adds to the already congested court dockets. **What is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or *related* causes and grant the same or *substantially the same* reliefs and in the process creates the possibility of conflicting decisions being rendered by the different courts upon the same issues**, regardless of whether

[178] 457 Phil. 740 (2003) [Per *J.* Bellosillo, Second Division].

Supreme Court E-Library

the court in which one of the suits was brought has no jurisdiction over the action.[179] (Emphasis supplied)

Equally settled is the test for determining forum shopping. As this court explained in *Yap v. Court of Appeals*:[180]

To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.[181]

Litis pendentia "refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious."[182] It requires the concurrence of three (3) requisites: (1) the identity of parties, or at least such as representing the same interests in both actions; (2) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.[183]

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[179] *Id*. at 747-748, citing *Santos v. Commission on Elections*, 447 Phil. 760 (2003) [Per *J*. Ynares-Santiago, *En Banc*]; *Young v. Keng Seng*, 446 Phil. 823 (2003) [Per *J*. Panganiban, Third Division]; *Executive Secretary v. Gordon*, 359 Phil. 266 (1998) [Per *J*. Mendoza, *En Banc*]; Joy *Mart Consolidated Corp. v. Court of Appeals, Seventh Division*, G.R. No. 88705, June 11, 1992, 209 SCRA 738 [Per *J*. Griño-Aquino, First Division]; and *Villanueva v. Adre*, 254 Phil. 882 (1989) [Per *J*. Sarmiento, Second Division].

[180] G.R. No. 186730, June 13, 2012, 672 SCRA 419 [Per *J*. Reyes, Second Division], citing *Young v. John Keng Seng*, 446 Phil. 823, 833 (2003) [Per *J*. Panganiban, Third Division].

[181] *Id*. at 428

[182] *Id*.

[183] *Id*. at 429, citing *Villarica Pawnshop, Inc. v. Gernale*, G.R. No. 163344, March 20, 2009, 582 SCRA 67, 78-79 [Per *J*. Austria-Martinez, Third Division].

Supreme Court E-Library

In turn, prior judgment or *res judicata* bars a subsequent case when the following requisites concur: (1) the former judgment is final; (2) it is rendered by a court having jurisdiction over the subject matter and the parties; (3) it is a judgment or an order on the merits; (4) there is – between the first and the second actions – identity of parties, of subject matter, and of causes of action.[184]

Redmont has taken at least four (4) distinct routes all seeking substantially the same remedy. Stripped of their verbosity and legalese, Redmont's petitions before the DENR Panel of Arbitrators, complaint before the Regional Trial Court, complaint before the Securities and Exchange Commission, and petition before the Office of the President all seek to prevent Narra, Tesoro, and McArthur as well as their co-respondents and/or co-defendants from engaging in mining operations. Moreover, these are all grounded on the same cause (*i.e.*, that they are disqualified from doing so because they fail to satisfy the requisite Filipino equity ownership) and premised on the same facts or circumstances.

Redmont has created a situation where multiple tribunals must rule on the extent to which the parties adverse to Redmont have met the requisite Filipino equity ownership. It is certainly possible that conflicting decisions will be issued by the various tribunals over which Redmont's various applications for relief have been lodged. It is, thus, glaring that the very evil sought to be prevented by the rule against forum shopping is being foisted by Redmont.

The consequences of willful forum shopping are clear. Rule 7, Section 5 of the 1997 Rules of Civil Procedure provides:

> Section 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification

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[184] *Luzon Development Bank v. Conquilla*, 507 Phil. 509, 523 (2005) [Per *J.* Panganiban, Third Division], citing *Allied Banking Corporation v. CA*, G.R. No. 108089, January 10, 1994, 229 SCRA 252, 258 [Per *J.* Davide, Jr., First Division].

Supreme Court E-Library

annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. **If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions**.

It strains credulity to accept that Redmont's actions have not been willful. By filing petitions with the DENR Panel of Arbitrators, Redmont started the entire series of events that have culminated in: first, the present petition; second, the de-consolidated G.R. No. 205513; and third, at least one (1) more petition filed with this court.[185]

Following the adverse decision of the Panel of Arbitrators, Narra, Tesoro, and McArthur pursued appeals before the Mines Adjudication Board. This is all but a logical consequence of the POA's adverse decision. While the appeal before the MAB was pending, Redmont filed a complaint with the SEC and then filed a complaint with the Regional Trial Court to enjoin the MAB from proceeding. Redmont seems to have conveniently forgotten that it was its own actions that gave rise to the proceedings before the MAB in the first place. Moreover, even as all these were pending and in various stages of appeal and/

[185] Arising from Redmont's petition with the Office of the President.

Supreme Court E-Library

or review, Redmont still filed a petition before the Office of the President.

Consistent with Rule 7, Section 5 of the 1997 Rules of Civil Procedure, the actions subject of these consolidated petitions must be dismissed with prejudice.

It should also not escape this court's attention that the vexatious actions of Redmont would not have been possible were it not for the permissiveness of Redmont's counsels. To reiterate, willful forum shopping leads not only to an action's dismissal with prejudice but "shall [also] constitute direct contempt, [and is] a cause for administrative sanctions."[186] Redmont's counsels should be reminded that the parameters established by judicial (and even administrative) proceedings, such as the rule against forum shopping, are not to be trifled with.

ACCORDINGLY, I vote to **GRANT** the petition for review on certiorari subject of G.R. No. 195580. The assailed decision dated October 1, 2010 and the assailed resolution dated February 15, 2011 of the Court of Appeals, Seventh Division, in CA-G.R. SP No. 109703, which reversed and set aside the September 10, 2008 and July 1, 2009 orders of the Mines Adjudication Board (MAB) should be **SET ASIDE AND DECLARED NULL AND VOID.** The September 10, 2008 order of the Mines Adjudication Board dismissing the petitions filed by Redmont Consolidated Mines with the DENR Panel of Arbitrators must be **REINSTATED.**

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[186] RULES OF COURT, Rule 7, Sec. 5.2