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SECOND DIVISION

[G.R. No. 178188. May 8, 2009]

OLYMPIC MINES AND DEVELOPMENT CORP., *petitioner, vs.* **PLATINUM GROUP METALS CORPORATION,** *respondent.*

[G.R. No. 180674. May 8, 2009]

CITINICKEL MINES AND DEVELOPMENT CORPORATION, *petitioner, vs.* **HON. JUDGE BIENVENIDO C. BLANCAFLOR, in his capacity as the Presiding Judge of the Regional Trial Court of Palawan, Branch 95, Puerto Princesa City, Palawan, and PLATINUM GROUP METAL CORPORATION,** *respondents.*

[G.R. No. 181141. May 8, 2009]

PLATINUM GROUP METALS CORPORATION, *petitioner, vs.* **CITINICKEL MINES AND DEVELOPMENT CORPORATION, acting for its own interest and on behalf of OLYMPIC MINES AND DEVELOPMENT CORPORATION,** *respondent.*

[G.R. No. 183527. May 8, 2009]

PLATINUM GROUP METALS CORPORATION, *petitioner, vs.* **COURT OF APPEALS and POLLY C. DY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; JURISDICTION; JURISDICTION OVER THE SUBJECT MATTER IS DETERMINED BY THE ALLEGATIONS OF THE COMPLAINT; CASE AT BAR.— Settled is the rule that jurisdiction of the court over the subject matter is determined by the allegation of the complaint. In

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Civil Case No. 4199, Platinum alleges in its complaint the following: xxx. From these allegations, we learn that Platinum had rights and interest in real property, specifically, the right to possess and to mine the subject mining areas for a certain period of time, as stated in the Operating Agreement. Olympic, however, had cast a cloud on its interest when: (a) Olympic sent Platinum a letter claiming that it had already terminated the Operating Agreement; (b) Olympic filed a complaint with the RTC Puerto Princesa, Palawan, Branch 52 (docketed as Civil Case No. 4181), asking the court to enjoin Platinum from conducting mining operations under the Operating Agreement, since this Agreement had already been unilaterally terminated by Olympic; and (c) Olympic wrote to the Governor of Palawan to inform him that its Operating Agreement with Platinum was already terminated and to request that the Governor revoke Platinum's SSMPs. Olympic's act clearly indicated its intent to deprive Platinum of its rights, prompting the latter to file the complaint to quiet its title or interest in the subject mining areas and remove all doubts as to the Agreement's continuous effectivity. Platinum's primary objective was to protect its interest in the subject mining areas covered by the Operating Agreement, specifically, under Section 2.12 and 3.4, both are obliged "to maintain the validity and subsistence of the mining rights subject of the agreement." It is thus obvious that the complaint falls within the ambit of the RTC's original jurisdiction, to the exclusion of all other judicial or quasi-judicial bodies.

2. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT 7942 (OTHERWISE KNOWN AS THE MINING ACT OF 1995); SECTION 77 THEREOF; JURISDICTION OF THE PANEL OF ARBITRATORS.— The POA's jurisdiction is set forth in Section 77 of the Mining Act: Sec. 77. *Panel of Arbitrators.*— xxx. Within thirty (30) working days, after the submission of the case by the parties for decision, ***t*he 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 permits**; 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. Section 77, paragraphs (a) and (b) are

the provisions principally invoked in this case to confer jurisdiction over the dispute between Olympic/Citinickel and Platinum – provisions which, upon closer inspection of the law and jurisprudence, belie Olympic's and Citinickel's contentions.

3. ID.; ID.; ID.; ID.; DISPUTES THAT FALL UNDER SECTION 77 (A) OF THE MINING ACT.— In *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation, et al.*, this Court, speaking through Justice Velasco, specified the kind of disputes that fall under Section 77(a) of the Mining Act: The phrase "disputes involving rights to mining areas" refers to any **adverse claim, protest, or opposition to an application for a mineral agreement.** xxx xxx xxx [T]he power of the POA to resolve any adverse claim, opposition, or protest relative to mining rights under Section 77 (a) of RA 7942 is confined only to **adverse claims, conflicts, and oppositions *relating to* applications for the grant of mineral rights.** xxx. **Clearly, POA's jurisdiction over "disputes involving rights to mining areas" has nothing to do with the cancellation of *existing* mineral agreements.**

4. ID.; ID.; ID.; ID.; JURISDICTION OF THE PANEL OF ARBITRATORS, WHEN MAY BE PROPERLY INVOKED; SECTION 77 (A) OF THE MINING LAW NOT APPLICABLE TO CASE AT BAR.— To properly fall within the POA's jurisdiction under Section 77 (a) of the Mining Law, the dispute must: 1. refer to an *adverse claim, protest, or opposition* **to an application for a mineral agreement;** and 2. be filed *prior to the approval* by the DENR Secretary of the **mineral agreement. Under these terms, Section 77 (a) established a cut-off period (i.e., before the approval of the mineral agreement) when the POA's jurisdiction may be properly invoked, and this period had long lapsed insofar as the dispute between Citinickel and Platinum is concerned, as Olympic's mining lease contract and its Operating Agreement with Platinum had already been approved by the Government**. Accordingly, invocation of the POA's jurisdiction under Section 77(a) finds no application in this case.

5. ID.; ID.; ID.; SECTION 77 (B) THEREOF; TERM "MINERAL AGREEMENT" DEFINED; OPERATING AGREEMENT IN CASE AT BAR IS NOT A CONTRACT BETWEEN THE

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GOVERNMENT AND A CONTRACTOR BUT A PURELY CIVIL CONTRACT BETWEEN TWO PRIVATE ENTITIES.— Neither will POA be vested with jurisdiction through Section 77(b), as the nature of the agreement between Olympic and Platinum is not the "mineral agreement" contemplated under the law. The term "mineral agreement" has a specific definition under the Mining Act, Section 3 (ab) thereof states: Section 3. *Definition of Terms.*— xxx (ab) "Mineral Agreement"—refers to a contract between the government and a contractor, involving mineral production-sharing agreement, co-production agreement, or joint-venture agreement. **Quite obviously, the Operating Agreement is not "a contract between the government and a contractor"; instead, it is *a purely civil contract between two private entities*—one of whom happens to be a party to a mineral agreement with the government**. While the enforcement of the terms of an operating agreement would necessarily *relate to* an existing and approved mineral agreement (as may be inferred from Section 4 of DENR Memorandum Order No. 2003-08), this however does not make the two concepts the same, nor does it make an operating agreement a specie of the mineral agreements contemplated under the Mining Act. Section 26 of the Mining Act states that a mineral agreement may be in the form of a mineral production sharing agreement, a co-production agreement or a joint-venture agreement, and does not include an operating agreement in the enumeration. Apart from this, the Mining Act and the various administrative issuances treat these two separately by providing for different requirements, rules, and procedures governing their application, approval, and cancellation. **Thus, to contend that a dispute involving operating agreements can be classified as a "dispute involving mineral agreements or permits" stretches the definition of "mineral agreement" beyond the clear terms of the law.**

6. ID.; ID.; ID.; JURISDICTION OF THE PANEL OF ARBITRATORS IS LIMITED TO RESOLUTION OF DISPUTES INVOLVING PUBLIC MINERAL AGREEMENTS.— Although Section 77 (d) of the Mining Act has transferred to the POA jurisdiction over disputes pending before the Bureau of Mines and the DENR, Section 77 (b) did not adopt the wording of Section 7, paragraphs (a) and (c) of PD No. 1281 so as to include all other forms of contracts –

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public or private – involving mining rights; Section 77 (b) in relation to Section 3 (ab) of the Mining Act did not include a general catch-all phrase to cover other agreements involving mining rights similar to those in Section 7, paragraphs (a) and (c) of PD No. 1281. Instead, the Mining Act, through the above-quoted Sections 3 (ab) and 26, has limited the jurisdiction of the POA, as successor of the adjudicatory functions of the Bureau of Mines, to mineral agreements between the government and the private contractor. Otherwise stated, while disputes between parties to any mining contract (including operating agreements) may previously fall within the Bureau of Mines' jurisdiction under Section 7 (a) or (c) of PD No. 1281, it can no longer be so placed now within the authority of the POA to settle under Section 77 (b) of the Mining Law because its jurisdiction has been limited to the resolution of disputes involving *public* mineral agreements.

7. ID.; ID.; ID.; AN OPERATING AGREEMENT CANNOT BE CONSIDERED AS A MINERAL PERMIT.— Parenthetically, the "permit" referred to in Section 77(b) of the Mining Act pertains to exploration permit, quarry permit, and other mining permits recognized in Chapters IV, VIII, and IX of the Mining Act. An operating agreement, not being among those listed, cannot be considered as a "mineral permit" under Section 77 (b). Since the Operating Agreement is not the mineral agreement contemplated by law, the contention that jurisdiction should be with the POA under Section 77 (b) of the Mining Act cannot be legally correct. **In plainer terms, no jurisdiction vests in the POA under the cited provision because the Operating Agreement is not the "mineral agreement" that Section 77(b) refers to.**

8. ID.; ID.; ID.; INVOCATION OF SECTION 77 THEREOF NOT SUFFICIENT TO CONFER JURISDICTION OVER THE DISPUTE TO THE PANEL OF ARBITRATORS; PHRASE "DISPUTES INVOLVING SURFACE OWNERS, OCCUPANTS AND CLAIM CONCESSIONAIRES," CONSTRUED.— Even an invocation of Section 77(c) of Mining Act (referring to "disputes involving surface owners, occupants and claim-holders/concessionaires") would not suffice to confer jurisdiction over the dispute to the POA. Surface-owners, occupants, and concessionaires refer to owners or occupants of the real property affected by the mining activities conducted

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by the claim-holders/concessionaires (entities which are holding mining rights granted by the government). Neither Citinickel nor Platinum falls under this classification.

9. CIVIL LAW; ESTOPPEL; DOCTRINE APPLIED TO CASE AT BAR.— Additionally, the Court notes that both Olympic and Citinickel have previously recognized the RTC's jurisdiction to decide the dispute when they filed civil cases before the trial courts of Palawan and Parañaque, respectively, for the cancellation of the Operating Agreement on account of Platinum's alleged gross violations. By doing so, both Olympic and Citinickel acknowledged the authority and jurisdiction of the trial court to resolve their dispute with Platinum. Not only did they acknowledge this jurisdiction, they as well failed to appeal the decisions rendered by the trial courts in these cases. Thereby, they accepted the binding effect of the trial court decision, and – more importantly – recognized the trial court's authority to rule on their dispute with Platinum regarding the Operating Agreement. In other words, they are now **estopped from claiming that the POA, rather than the trial court, has the sole and exclusive authority to resolve the issue of whether the Operating Agreement may be rescinded for Platinum's alleged violations.**

10. REMEDIAL LAW; ACTIONS; VENUE; THE PRIMARY OBJECTIVE IN FILING THE CASE IS THE CONTROLLING FACTOR IN THE DETERMINATION OF THE VENUE THEREOF; CASE AT BAR.— The controlling factor in determining venue for cases is the primary objective for which said cases are filed. As we had earlier stated, Platinum's primary objective in filing the complaint is to protect its interest in the subject mining areas, although it joined its claims of breach of contract, damages, and specific performance in the case. In any event, the Rules of Court allow joinder of causes of action in the RTC, provided one of the causes of action (in this case, the cause of action for quieting of title or interest in real property located in Palawan) falls within the jurisdiction of said court and venue lies therein. **In fine, there is absolutely no reason to disturb the CA's findings that venue was properly laid in the Palawan court**. In light of these, **the Court affirms the jurisdiction of the RTC of Puerto Princesa, Palawan, Branch 95, and accordingly dismiss Olympic's petition for review on *certiorari* in G.R. 178188.**

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11. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT 7942 (OTHERWISE KNOWN AS THE MINING ACT OF 1995); ASSIGNMENT OR TRANSFER OF A MINERAL AGREEMENT APPLICATION, WHEN TAKES EFFECT.— Even if Platinum knew of the assignment/transfer, it was not bound to include Citinickel in the complaint because the assignment/transfer of a mineral agreement application would, by law, take effect only *after* the approval of the DENR Secretary or his representative. Section 40 of DENR Administrative Order No. 96-40 (Implementing Rules and Regulations of the Mining Act), which states: xxx. The provision is clear – any transfer or assignment of a mineral agreement application is still subject to the approval of the Director of the Mines and Geosciences Bureau or the Regional Director concerned. In determining whether to approve the assignment or not, the Director or Regional Director has to consider the national interest, public welfare, as well as study the eligibility of the party to whom said application is being transferred to. Any assignment of a mineral agreement is thus considered provisional, pending final approval by the Director or Regional Director. Thus, although the Deed of Assignment between Olympic and Citinickel was executed on June 9, 2006, the actual transfer of rights occurred only *after* the Regional Director of the MGB Regional Office No. IV-B had given its approval to the assignment on September 6, 2006, or after Civil Case No. 4199 was filed on June 14, 2006. Accordingly, Citinickel, being a mere successor-in-interest of Olympic, is bound by the questioned injunction order. Even if we disregard the inclusion of Citinickel in the July 16, 2006 Order granting the application for a writ of preliminary injunction, the result would be the same – the injunction imposed on Olympic will similarly bind Citinickel.

12. ID.; ID.; EXHAUSTION OF ADMINISTRATIVE REMEDIES; EXCEPTIONS TO THE RULE.— The rule of exhaustion of administrative remedies admits of numerous exceptions, such as: 1) when there is a violation of due process; 2) when the issue involved is purely a legal question; 3) *when the administrative action is patently illegal amounting to lack or excess of jurisdiction;* 4) when there is estoppel on the part of the administrative agency concerned; 5) when there is irreparable injury; 6) when the respondent is a department secretary whose acts as an alter ego of the President bears the

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implied and assumed approval of the latter; 7) when to require exhaustion of administrative remedies would be unreasonable; 8) when it would amount to a nullification of a claim; 9) when the subject matter is a private land in land case proceedings; 10. when the rule does not provide a plain, speedy and adequate remedy; and 11. *when there are circumstances indicating the urgency of judicial intervention.* Platinum's serious allegations amount to circumstances calling for urgent judicial intervention. More importantly, Platinum's allegations essentially attack POA's jurisdiction over Citinickel's complaint for lack or excess of jurisdiction. The CA thus committed a reversible error when it failed to recognize the POA's jurisdictional errors and instead, mistakenly placed its reliance on a procedural technicality.

13. REMEDIAL LAW; PROVISIONAL REMEDIES; INJUNCTION; INJUNCTIVE WRIT AGAINST A PARTY BINDS ITS SUCCESSOR-IN-INTERST.— Going into the merits of G.R. No. 181141, the Court finds that the POA Resolution was issued in disregard of the injunctive writs in Civil Case No. 4199. We have earlier ruled in G.R. No. 180674 that Citinickel, as successor-in-interest of Olympic, became bound by the writ of injunction issued by the trial court, even though it was not formally impleaded as a party when Civil Case No. 4199 was instituted. The injunction prohibited the parties – Citinickel included – from performing "any act that will tend to impede, hamper, limit or adversely affect the full enjoyment by [Platinum] of its rights under the Operating Agreement xxx [and] from performing any act which will disturb the *status quo*." When the POA issued the assailed Resolution rescinding the Operating Agreement and cancelling Platinum's SSMPs at the instance of Citinickel, it clearly went against the prohibition.

14. ID.; ACTIONS;RULE AGAINST FORUM SHOPPING; VIOLATED IN CASE AT BAR.— Not only was the POA Resolution issued in contravention of the injunctive writ, POA Case No. 2006-02-B (where the Resolution was issued) was instituted in blatant violation of the rules of forum shopping. POA Case No. 2006-02-B was instituted while Citinickel's complaint for cancellation of the Operating Agreement was pending before the RTC of Paranaque (docketed as Civil Case NO. 06-0185). And while there was yet no decisive ruling on

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the status and validity of the Operating Agreement in these cases, Citinickel had prematurely instituted petitions to cancel Platinum's SSMPs and ECCs before the PMRB (docketed as PMRB Case No. 002-06) and EMB, respectively. Along the same line, Citinickel filed a *mandamus* petition before the RTC of Quezon City (docketed as Civil Case No. Q-07-59855) to compel the DENR Secretary to confiscate and hold possession of the mineral ores of Platinum stockpiled at the Palawan pier. Over and above these cases, Olympic had, prior to the assignment, already instituted similar actions before the same courts and agencies – actions Citinickel is similarly bound as the assignee/transferee of Olympic.

15. ID.; ID.; ID.; WHILE A PARTY MAY AVAIL HIMSELF OF THE REMEDIES PRESCRIBED BY LAW, SUCH PARTY IS NOT FREE TO RESORT TO THEM SIMULTANEOUSLY OR AT HIS PLEASURE OR CAPRICE; CASE AT BAR.— Both Olympic and Citinickel evidently trifled with the courts and abused its processes by improperly instituting several cases before various judicial and quasi-judicial bodies, one case after another (some even simultaneously filed during the pendency of other cases) once it became evident that a favorable decision will not be obtained in the previously filed case – all of which are focused on the termination of the Operating Agreement and the cancellation of Platinum's mining permits. While a party may avail himself of the remedies prescribed by law or by the Rules of Court, such party is not free to resort to them simultaneously or at his pleasure or caprice. **The actions of Olympic and Citinickel, taken separately or collectively, betray a pattern of calculated and intentional forum shopping that warrants denial of the reliefs they pray for**.

CARPIO MORALES, *J., concurring opinion*:

REMEDIAL LAW; COURTS; JURISDICTION; DETERMINED BY THE MATERIAL ALLEGATIONS OF THE COMPLAINT AND THE LAW, IRRESPECTIVE OF WHETHER THE PLAINTIFF IS ENTITLED TO RECOVER ALL OR SOME OF THE RELIEFS SOUGHT; PANEL OF ARBITRATORS HAS NO JURISDICTION OVER THE CASE AT BAR.— On the question of jurisdiction, going by the well-entrenched principle that jurisdiction is determined

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by the material allegations of the complaint and the law, irrespective of whether the plaintiff is entitled to recover all or some of the reliefs sought, I find that the main issue brought forth by Platinum's complaint for Quieting of Title/Interest and Removal of Cloud, Breach of Contract and Damages, and Specific Performance in Civil Case No. 4199 is the validity of Olympic's unilateral termination of the Operating Agreement. Consistent with the case of *Gonzales* cited by the dissent of *J*. Tinga, this is a *judicial* question as it involves the determination of what the law is and what the legal rights of the parties are with respect to the matter in controversy. The resolution of this question, in turn, affects the parties' title to, possession of, or interest in, the subject real property. Jurisdiction, thus, lies with the trial court and not the Panel of Arbitrators of the Department of Environment and Natural Resources.

TINGA, *J., dissenting opinion*:

1. REMEDIAL LAW; COURTS; JURISDICTION; JURISDICTION OF THE COURTS OVER THE SUBJECT MATTER OF THE ACTION IS DETERMINED BY THE MATERIAL ALLEGATIONS OF THE COMPLAINT AND THE LAW; CASE AT BAR.— The well-entrenched principle is that the jurisdiction of the court over the subject matter of the action is determined by the material allegations of the complaint and the law, irrespective of whether or not the plaintiff is entitled to recover all or some of the claims or reliefs sought therein. Platinum's complaint, styled as one for Quieting of Title/ Interest and Removal of Cloud, Breach of Contract and Damages, and Specific Performance, alleges: xxx. It would seem, at first glance, that the complaint involves title to, or possession of, real property, or an interest therein, bringing the complaint within the exclusive original jurisdiction of the RTC. A thorough examination of the complaint, however, reveals an underlying question which makes the jurisdiction of the RTC over the complaint not so indubitable.

2. ID.; ID.; ID.; MINING DISPUTE DISTINGUISHED FROM JUDICIAL QUESTION; LIMITATION ON THE JURISDICTION OF THE PANEL OF ARBITRATORS OVER MINING DISPUTES.— The Court in *Gonzales*

distinguished between a mining dispute within the exclusive and original jurisdiction of the POA and a judicial question properly resolved by regular courts. We held: 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 area, (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 Panel's jurisdiction is limited only to those mining disputes which raise questions of fact or matters requiring the application of technological knowledge and experience.

3. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT 7942 (OTHERWISE KNOWN AS THE MINING ACT OF 1995), SECTION 77 THEREOF; PANEL OF ARBITRATORS; JURISDICTION THEREOF OVER COMPLAINTS RELATING TO DISPUTES INVOLVING MINERAL AGREEMENTS OR PERMITS.— The majority argues that following our ruling in *Celestial Mining v. Macroasia*, the POA cannot exercise jurisdiction over Citinickel's complaint on the basis on Section 77(a), the key phrase of the provision being "disputes involving rights to mining areas." We said in *Celestial*: [T]he power of the POA to resolve any adverse claim, opposition, or protest relative to mining rights under Section 77(a) of RA 7942 is confined only to adverse claims, conflicts, and oppositions **relating to applications for the grant of mineral rights**. xxx. Clearly, POA's jurisdiction over "disputes involving rights to mining areas" has nothing to do with the cancellation of existing mineral agreements. The complaint herein did not pertain to "applications for the grant of mineral rights," hence Section 77(a) need not apply. **Verily though, the POA properly exercised**

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jurisdiction over Citinickel's complaint, on the basis of Section 77(b), which relates to "disputes involving mineral agreements or permits".

4. ID.; ID.; ID.; ID.; JURISDICTION THEREOF IS LIMITED ONLY TO THOSE MINING DISPUTES WHICH RAISE QUESTIONS OF FACT OR MATTERS REQUIRING THE APPLICATION OF TECHNOLOGICAL KNOWLEDGE AND EXPERIENCE.— xxx **It thus emerges that at least two of the key questions raised in the complaint: whether or not Platinum had engaged in illegal large scale mining by extracting more ore than it was allowed under the law, and whether Platinum's mining activity had caused environmental damage, are questions that involve the expertise of the POA, rooted as they are in the determination of scientific facts and technical issues.** Notably, among the members of the POA is a mining engineer or a professional in a related field who would be adept at evaluating the technical issues involved. In contrast, a degree in the mining sciences is not a prerequisite to assume a judicial seat, and it would come as an eccentric surprise if there are actually judges out there conversant with the technical aspects of mining. We held in *Gonzales v. Climax Mining* that the POA's jurisdiction "is limited only to those mining disputes which raise questions of fact or matters requiring the application of technological knowledge and experience."

5. ID.; ID.; ID.; ID.; HAS JURISDICTION TO PREVENT RESPONDENT CORPORATION FROM FURTHER VIOLATION OF THE MINERAL AGREEMENT.— The complaint filed with the POA can be accommodated with ease under Section 77(b), which states "disputes involving mineral agreements." The subject dispute involves mineral agreements, since it was under the indispensable authority of the mineral agreements that Platinum had allegedly committed the assailed acts. The violations complained of Platinum are indisputably contrary to the mineral agreements themselves, which Platinum was bound to observe under the terms of the Operating Agreement. The POA certainly has the jurisdiction to prevent further violations on the part of Platinum, and there is nothing in Section 77(b) that would prevent the POA from restraining Platinum's continued abuse of the earth under the authority of the Operating Agreement.

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6. ID.; ID.; ID.; ID.; HAS JURISDICTION OVER DISPUTE INVOLVING VIOLATION BY A PARTY OF THE RIGHT OF ANOTHER UNDER A SUBSISTING MINERAL AGREEMENT; CASE AT BAR.—With respect to Section 77(b), the Court in *Celestial* concluded that the POA had no jurisdiction over a petition for the cancellation of an existing mineral agreement based on the alleged violation of any of the terms thereof. That conclusion aligns with the *ponencia* since the instant cases do not involve the cancellation of the mineral agreements themselves. The Court in *Celestial* also required the existence of a "dispute" for Section 77(b) to apply, pertaining "to a violation by a party of the right to another." Herein, there is clearly a dispute between the rights of Citinickel (as successor-in-interest of Olympic) and Platinum, where the latter's violations have jeopardized the former's highly regulated rights and privileges under a subsisting mineral agreements. Citinickel, as Olympic's successor-in-interest, is a real party-in-interest with a material and substantial interest in the mineral agreements which it had legally taken over. In addition, the determination of the claims involve the terms of the mineral agreements themselves, relating as they do to violations of the law and environmental regulations with which the contractee to a mineral agreement is obliged to comply. Under the framework set forth in *Celestial*, the complaint filed by Citinickel falls within the jurisdiction of the POA under Section 77(b) of the Mining Act.

7. REMEDIAL LAW; ACTIONS; PARTIES; INDISPENSABLE PARTY; PRESENCE THEREOF IS A *SINE QUA NON* TO THE TRIAL COURT'S EXERCISE OF JUDICIAL POWER.—Citinickel claims that prior to Platinum's filing of its complaint in Civil Case No. 4199 on June 14, 2006, the Deed of Assignment, whereby Olympic assigned to Citinickel all its rights and interest over its mining claims, had already been executed on June 9, 2006. Citinickel became an indispensable party to the suit by virtue of the prior assignment to it of Olympic's mining rights, which included the latter's rights over the disputed areas occupied by Platinum. As an indispensable party without whom no final determination can be had in the case, Citinickel's presence was a *sine qua non* to the trial court's exercise of judicial power.

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8. ID.; PROVISIONAL REMEDIES; INJUNCTION; STRANGERS TO A CASE ARE NOT BOUND BY JUDGMENT RENDERED BY THE COURT.— In *Matuguina v. Court of Appeals,* the Court invalidated a DENR Order of Execution directed against one which was never a party to the assailed proceeding resulting in the issuance of such Order and, without affording the same an opportunity to be heard before it was adjudged liable. We stated: Generally accepted is the principle that no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by judgment rendered by the court. In the same manner an execution can be issued only against a party and not against one who did not have his day in court. xxx. In a similar vein, the failure to implead Citinickel even though Olympic had ceded its rights to Citinickel **prior to the filing of Platinum's complaint** necessarily relieves Citinickel from the jurisdiction of the Palawan RTC. At the time of the filing of the complaint, Citinickel was already a real party-in-interest and an indispensable party which should have been impleaded. The cases cited above clearly refute the majority's contentions on those points.

9. ID.; ID.; ID.; INJUNCTIVE WRIT ISSUED AGAINST PARTIES WHO WERE NEVER IMPLEADED IN THE CASE SHOULD BE NULLIFIED.— It is unacceptable that the trial court proceeded to include Citinickel in its injunctive order when it had never acquired jurisdiction over Citinickel in the first place. For the same reason, it should be said that the expanded writ of injunction against the DENR, the DENR Secretary, the POA, the EMB, and the MGB, all of whom were never impleaded in the case, should be nullified. Indeed, the complaint should have been dismissed, failing which, all subsequent actions of the court are deemed null and void for want of authority to act, not only as to the absent parties such as Citinickel and the above-mentioned DENR agencies but even as to those present.

10. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WILL NOT LIE WHEN THERE ARE OTHER REMEDIES AVAILABLE TO THE PETITIONER.— It cannot be overemphasized that the extraordinary remedy of *certiorari* will not lie when there are other remedies available to the petitioner. Indeed, Platinum cannot be allowed to forgo procedure simply based on its belief, misguided at that, that filing an appeal with the MAB would have been futile. It was indeed rash for Platinum to suppose

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that just because the DENR Secretary, who also heads the MAB, issued an Order cancelling Platinum's ECC's, he would not give due regard to his duty to review and, if need be, reconsider an Order he had issued.

11. ID.; ID.; ID.; DISMISSAL OF THE PETITION PROPER IN CASE AT BAR; APPEAL TO THE MINES ADJUDICATION BOARD PROPER REMEDY TO PREVENT THE RESOLUTION OF THE PANEL OF ARBITRATORS FROM ATTAINING FINALITY.— The foregoing rule is clear enough. The filing of an appeal to the MAB is the only procedural recourse that would have effectively prevented the POA Resolution from attaining finality. Given that Platinum deliberately ignored the remedy laid out in the POA and MAB Rules, the appellate court's dismissal of its petition for *certiorari* was proper. The finality of the POA Resolution followed *ipso facto*.

12. POLITICAL LAW; ADMINISTRATIVE LAW; MINING ACT OF 1995 OTHERWISE KNOWN AS REPUBLIC ACT 7942; PETITIONER PLATINUM HAS NO RIGHT TO POSSESS AND OCCUPY THE MINING AREAS DUE TO THE CANCELLATION AND EXPIRATION OF THE MINING PERMIT ISSUED THEREON.— Platinum's right to conduct mining operations in the disputed mining areas proceeds solely from the Operating Agreement, from which also emanates Platinum's privilege to apply for SSMPs and ECCs. It should be noted that Platinum is not a grantee of a mining concession nor was any mining permit issued in its favour by the DENR independent of the Operating Agreement. Moreover, the POA Resolution cancelled and withdrew the SSMPs issued to Platinum. These same SSMPs (SSMP-PLW-039 and SSMP-PLW-040) issued by the Provincial Governor on November 4, 2004 had already expired two years thence, or on November 3, 2006, as provided for under Sec. 13 of Republic Act No. 7076, otherwise known as the People's Small-Scale Mining Act of 1991. It follows, too, that the ECCs issued by the DENR have become *functus officio*. In view of the cancellation of the Operating Agreement as decreed by the POA and the cancellation and expiration of the SSMPs issued to Platinum, the latter clearly has no right to possess and

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occupy the mining areas that now belong to Citinickel by virtue of the Deed of Assignment dated June 9, 2006.

LEONARDO-DE CASTRO, *J., separate opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; THE PHILIPPINE MINING ACT OF 1995 (R.A. NO. 7942); PANEL OF ARBITRATORS; JURISDICTION THEREOF.— The jurisdiction of the POA is embodied in the Section 77 of Republic Act No. 7942 (The Philippine Mining Act of 1995), to wit: 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 permits**; (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.

2. ID.; ID.; ID.; TERM "MINERAL AGREEMENT," DEFINED.— Both the *ponencia* and the dissent opine that the present controversy does not fall under Section 77(a), under the parameters laid down in *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation*. However, they disagree whether the dispute falls under Section 77(b). On this point, I agree with the *ponencia* that the Operating Agreement does not come within the ambit of Section 77(b) for it is not a "mineral agreement" as defined under RA No. 7942. As defined by statute, a "mineral agreement" is a contract **between the government and a contractor**, involving mineral production-sharing agreement, co-production agreement, or joint-venture agreement. A "mineral production sharing agreement," "co-production agreement" and "joint venture agreement" likewise have technical definitions under the law and suffice it to say, that the Operating Agreement did not fit any of those definitions. Neither did the Operating Agreement involve an assignment or transfer of rights and obligations under a mineral agreement as contemplated by Section 30 of RA No. 7942.

3. ID.; ID.; ID.; RELATIONSHIP BETWEEN THE PETITIONER OLYMPIC AND RESPONDENT PLATINUM IS AKIN TO THE CONCEPT OF AGENCY.— To begin with, it is unclear

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if Olympic had a subsisting grant from the government over the subject mining areas at the time the Operating Agreement was executed. What is apparent from the pleadings is that Olympic was previously granted mining lease contracts over the mining areas and that Olympic was also the applicant for an MPSA for the same mining areas. In any event, whatever rights and obligations Olympic had as the previous grantee of mining concessions or as the recognized applicant for an MPSA over the said mining areas, none of those mining rights and obligations were transferred or assigned to Platinum. Under the Operating Agreement, Olympic was simply allowing Platinum to undertake mining activities on Olympic's mining claims or to operate Olympic's mines on the former's behalf. Their relationship under the Operating Agreement is akin to the concept of agency under civil law. Olympic allowed Platinum to do acts within the mining areas that Olympic itself could lawfully do but only for and on Olympic's behalf. In fact, Olympic and Citinickel referred to Platinum as an "agent" in their petition before the POA.

4. ID.; ID.; ID.; TERM "DISPUTE," DEFINED; PHRASE "DISPUTES INVOLVING RIGHTS TO MINING AREAS," CONSTRUED; CASE AT BAR.— It is also doubtful that the present controversy is the sort of "dispute" over which the POA has jurisdiction. In *Celestial*, the Court held that a dispute is defined as "a conflict or controversy; a conflict of claims or rights; an assertion of a right, claim or demand on one side; met by contrary claims or allegations on the other." Taking this definition of a "dispute" and interpreting the provisions of DENR AO 96-40, the Court held in *Celestial* that the phrase "disputes involving rights to mining areas" in Section 77(a) refers to any adverse claim, protest, or opposition to an **application** for mineral agreement. Analogous to the reasoning in *Celestial*, to my mind, Section 77(b) should likewise be interpreted as referring to conflicting interests and claims with respect to a **granted** mineral agreement or permit. In the cases at bar, there were no conflicting claims or rival interests in a mineral agreement or permit granted by the government. There was only one grantee of, or applicant for, a mineral agreement and that was Olympic (later substituted by Citinickel). Any mining rights that Platinum enjoyed or exercised under the Operating Agreement was in representation of Olympic. It is

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conceded that Platinum had no mining grant or concession from the government in its own name over the same mining areas. Platinum was issued mining permits, not as a grantee or applicant in its own right, but as Olympic's agent/operator. In other words, there is an identity of interests between Olympic and Platinum. There could be no rival or disputing claims to a granted mineral agreement or permit.

5. ID.; ID.; ID.; PANEL OF ARBITRATORS; NO JURISDICTION TO CANCEL THE OPERATING AGREEMENT NOR DECLARE IT OF NO FORCE AND EFFECT; PETITIONER PLATINUM'S CAUSES OF ACTION FALL WITHIN THE JURISDICTION OF THE REGIONAL TRIAL COURT.— Premises considered, the POA had no jurisdiction to cancel the Operating Agreement nor to declare it of no force and effect. To reiterate, the Operating Agreement is not a mineral agreement. Notwithstanding the technical nature of some of the undertakings in the Operating Agreement and despite the State's interest in ensuring compliance with mining laws by the parties thereto, the Operating Agreement is primarily a civil contract between private persons and the rights and obligations of the parties thereto is properly determined by the civil courts. Platinum's commitment under the Operating Agreement to faithfully comply with mining laws and regulations was only one of the obligations involved in said agreement. The causes of action raised by Platinum in its complaint, such as the alleged (a) invalid termination of the Operating Agreement, (b) bad faith attending the termination, (c) entitlement to damages and specific performance, are well within the jurisdiction of the RTC.

6. ID.; ID.; ID.; ID.; NO JURISDICTION TO CANCEL THE MINING PERMIT OF THE RESPONDENT CORPORATION; POWER TO CANCEL OR WITHDRAW A MINERAL AGREEMENT OR PERMIT FOR VIOLATION OF THE TERMS AND CONDITIONS THEREON BELONG TO THE APPROVING AUTHORITY.— As for the POA's cancellation of the SSMPs of Platinum, I am also of the considered view that the POA had no jurisdiction to issue such an order. The underlying principle in *Celestial* is that it is the approving/granting authority that has the power to cancel or withdraw a mineral agreement or permit on the ground of violation of the terms and conditions of the agreement or permit.

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SSMPs are not issued by the POA. Under Section 103 of DENR Administrative Order No. 96-40, it is the Provincial Governor/City Mayor, through the Provincial/City Mining Regulatory Board, that has the power to approve SSMPs for areas outside mineral reservations. The records show that Platinum's SSMPs were approved by the Provincial Governor, through the proper provincial mining regulatory board. I believe the proposed cancellation of an SSMP for any violation of the terms thereof should be brought before the issuing/approving authority and not the POA.

7. ID.; ID.; ID.; THE ENVIRONMENTAL MANAGEMENT BUREAU OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES HAS THE JURISDICTION TO INVESTIGATE THE ISSUE ON VIOLATIONS OF THE TERMS AND CONDITIONS OF THE ENVIRONMENTAL COMPLIANCE CERTIFICATES (ECCS).— As for the purported violations by Platinum of the terms and conditions of its ECCs, I likewise believe that the Environmental Management Bureau of the DENR, as the issuing/approving authority, has the jurisdiction to investigate and pass upon the matter. Thus, the parties should exhaust their administrative remedies on the matter of environmental compliance.

8. ID.; ID.; ID.; BREACHES OF THE OPERATING AGREEMENTS FALL WITHIN THE JURISDICTION OF THE REGULAR COURTS WHILE BREACHES OF THE TERMS OF THE MINING PERMITS BELONG TO THE JURISDICTION OF THE APPROPRIATE EXECUTIVE ADMINISTRATIVE AGENCIES.— As for the injunctive writs issued by the RTC and the CA, I concur with the *ponencia* on the propriety of setting aside the writ of preliminary injunction issued by the CA against the RTC in Civil Case No. 4199 and in affirming the validity of the injunctive writs issued by the RTC for substantially the same reasons stated in the *ponencia*. I qualify my vote, however, with respect to the RTC's injunctive order against the DENR and its offices/agencies. The RTC's order should be understood as only preventing the said agencies from taking jurisdiction over disputes pertaining to the Operating Agreement. However, the RTC should not enjoin the DENR and its offices, or other executive/administrative agencies, from exercising their jurisdiction over alleged violations of the terms of Platinum's ECCs or other mining permits. To my mind,

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breaches of the Operating Agreement and breaches of the terms of Platinum's ECCs or mining permits are different matters. The former belongs to the jurisdiction of the regular courts while the latter belongs to the jurisdiction of the appropriate executive/administrative agencies. Each should respect the jurisdiction of the others.

APPEARANCES OF COUNSEL

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D E C I S I O N

BRION, *J.*:

Before the Court are the following inter-related and subsequently consolidated cases:

1. **G.R. No. 178188** is a petition for review on *certiorari* filed by Olympic Mines and Development Corporation (*Olympic*) assailing the decision dated February 28, 2007,[1] and resolution dated May 30, 2007[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 97259, which effectively upheld the jurisdiction of the Regional Trial Court (*RTC*) of Puerto Princesa City, Branch 95, in Civil Case No. 4199, and affirmed the injunctive writs issued therein;

2. **G.R. No. 180674** is a petition for review on *certiorari* filed by Citinickel Mines and Development Corporation

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[1] *Rollo*, G.R. No. 178188, pp. 41-58.

[2] *Id.*, pp. 78-80.

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(*Citinickel*) assailing the decision dated November 20, 2007 of the CA in CA-G.R. SP No. 99422, which dismissed the petition for *certiorari* filed by Citinickel against the injunctive writ[3] issued by the RTC of Puerto Princesa, Branch 95 in Civil Case No. 4199;

3. **G.R. No. 183527** is a petition for *certiorari* filed by Platinum Group Metals Corporation (*Platinum*), assailing the resolution dated March 3, 2008 of the CA in CA-G.R. SP No. 101544, which ordered the issuance of a writ of preliminary injunction enjoining the RTC of Puerto Princesa, Branch 95, from conducting further proceedings in Civil Case No. 4199; and

4. **G.R. No. 181141** is a petition for review on *certiorari* filed by Platinum against the resolution dated January 18, 2007 of the CA in CA-G.R. SP No. 97288, which dismissed the petition for *certiorari* filed by Platinum against the Panel of Arbitrators (*POA*) Resolution cancelling the Operating Agreement and its Small Scale Mining Permits (*SSMPs*).

These four (4) petitions stem from the Operating Agreement entered into by Olympic and Platinum, and the subsequent attempts made by Olympic, and thereafter its successor-in-interest Citinickel, to unilaterally terminate the same.

FACTUAL BACKGROUND

Operating Agreement between Olympic and Platinum

In 1971 and 1980, Olympic was granted "Mining Lease Contracts"[4] by the Secretary of the Department of Environment

[3] RTC Order dated July 21, 2006 (granting Platinum's application for writ of preliminary injunction).

[4] Numbered as PLC-V-544, PLC-V-545, PCL-V-550, MLC-MRD-127, MLC-MRC-128, MLC-MRD-129, and MLC-MRC-130. The mining lease contracts subsequently became the subject of mineral production sharing agreements (*MPSA*) applications by Olympic (AMA-IVB-040 and AMA-IVB-0454).

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and Natural Resources (*DENR*) covering mining areas located in the municipalities of Narra and Espanola, Palawan.

On July 18, 2003, Olympic entered into an **Operating Agreement**[5] with Platinum, by virtue of which Platinum was given the exclusive right to control, possess, manage/operate, and conduct mining operations, and to market or dispose mining products on the Toronto Nickel Mine in the Municipality of Narra, with an area of 768 hectares, and the Pulot Nickel Mine in the Municipality of Espanola, covering an area of 1,408 hectares (referred to as *subject mining areas*), for a period of twenty five years. In return, Platinum would pay Olympic a royalty fee of 2½% of the gross revenues.

Olympic and Platinum applied for, and were subsequently granted the necessary government permits and environmental compliance certificates.

On April 24, 2006, Olympic sent a letter to Platinum, informing the latter of the immediate termination of the Operating Agreement on account of Platinum's gross violations of its terms, and directing Platinum to immediately surrender possession of the subject mining areas under the Operating Agreement.

Civil Case No. 4181 and the Branch 52 Order

On April 25, 2006, Olympic instituted an action for the issuance of an injunctive writ before the RTC of Puerto Princesa, Branch 52 (docketed as Civil Case No. 4181) against Platinum. In its prayer, Olympic sought to enjoin Platinum from conducting mining operations on the subject mining areas, and also to recover possession thereof. Civil Case No. 4181 essentially involved the issue of whether Olympic can unilaterally terminate the Operating Agreement on account of the alleged gross violations committed by Platinum, and accordingly, prevent the latter from continuing its mining operations. The RTC, through an Order dated May 16, 2006 (*Branch 52 Order*), ruled that it did not; the trial court found that Platinum substantially complied with the terms of the Operating Agreement and declared that Olympic's

[5] *Rollo*, G.R. No. 178188, pp. 87-94.

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unilateral termination thereof was legally impermissible.[6] The RTC thus dismissed Olympic's complaint.

Administrative Complaints Instituted by Olympic

Instead of seeking relief against the Branch 52 Order (which thus became final and executory), Olympic then filed two cases with different agencies of the DENR:

a. Provincial Mining Regulatory Board (*PMRB*) Case No. 001-06 (filed on May 18, 2006) for the revocation of the SSMPs of Platinum, on the ground of Olympic's termination of the Operating Agreement because of the alleged gross violations thereof by Platinum. This was dismissed through a Resolution dated August 16, 2006, on the basis of the Branch 52 Order which found Olympic's unilateral rescission of the Operating Agreement to be illegal;[7] and

b. POA Case No. 2006-01-B (filed on June 8, 2006) for the cancellation of the Operating Agreement and the revocation of the SSMPs of Platinum. This case was subsequently withdrawn by Olympic on June 20, 2006

Assignment of Rights under the Operating Agreement

While these two administrative cases were pending, Olympic transferred its applications for mineral agreements, including its rights under the Operating Agreement, to Citinickel *via* a Deed of Assignment dated June 9, 2006, without the knowledge or consent of Platinum. This assignment was thereafter approved by the Regional Director of the Mines and Geosciences Bureau (*MGB*) on September 6, 2006.

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[6] *Rollo* (G.R. No. 180674), pp. 402-404.

[7] *Rollo*, G.R. No. 180674, pp. 592-596, states in part:

The PMRB Resolution

> As born out of the records, the letter-complaint does not present any other ground aside from those matters that have already been passed upon by the Court in Civil Case No. 4181. Ergo, since the

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Civil Case No. 06-0185

After the assignment, Citinickel filed Civil Case No. 06-0185 before the RTC of Parañaque, Branch 258, on June 21, 2006, seeking to invalidate the Operating Agreement based on Platinum's alleged violation of its terms. This action was also dismissed by the trial court, citing forum shopping and improper venue as among the grounds for dismissal.[8] Citinickel did not bother to appeal this dismissal, opting instead to find other remedies.

Administrative Cases Instituted by Citinickel

Citinickel thereafter filed three administrative cases: PMRB Case No. 002-06, DENR Environmental Management Bureau (*EMB*) Case No. 8253, and POA Case No. 2006-02-B.

PMRB Case No. 002-06, where Citinickel sought the cancellation of Platinum's SSMPs, was dismissed through a

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> ground for revocation of the [SSMPs] dwells more on the termination of the Operating Agreement between [Olympic] and [Platinum], which is contractual in nature, over which the competent court had already ruled over the same issue raised herein, this Board finds no cogent reason to disturb the said Order dated May 16, 2006, which appears to have become final and executory.

[8] *Rollo*, G.R. No. 178188, pp. 511-519, states in part:

> The PMRB Resolution
>
> > With regard to the second issue that there are pending cases between the same parties for the same cause of action, the court found that there is her identity of parties in the sense that the complainants are the same because **there is privity between [Olympic] and [Citinickel] which is the former's successor-in-interest who are litigating for the same subject matter and under the same title of being the awardee and in the same capacity.**
> >
> > xxx xxx xxx
> >
> > After weighing the grounds relied upon by the parties in this regard, **the court found that venue in this case has been improperly laid**, since the reliefs prayed for by [Citinickel] is the return and/or surrender of the possession and control of the subject mining areas, as well as other personal equipment and documents appurtenant to the subject mining sites. **The action therefore is real and not personal, contrary to the claim of [Citinickel]**. [Emphasis supplied]

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Resolution dated September 12, 2006, on the basis of the injunctive writ issued in Civil Case No. 4199, as well as the finding of the PMRB that Citinickel committed forum shopping.[9]

DENR EMB Case No. 8253 was instituted by Citinickel requesting for the cancellation of the Environmental Compliance Certificates (*ECCs*) of Platinum; although granted by the EMB, and later affirmed by the DENR Secretary, the cancellation of Platinum's ECCs was reversed by the Office of the President.

While Civil Case No. 06-0185 (for the rescission of the Operating Agreement) was pending before the RTC of Paranaque, Citinickel filed a complaint, docketed as POA Case No. 002-06-B, with the POA of DENR, asking for a writ of injunction against Platinum and for the cancellation of the Operating Agreement. This time, Citinickel's relentless efforts to have the Operating Agreement cancelled bore fruit – the POA issued a Resolution dated October 30, 2006 (*POA Resolution*)[10] that

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[9] *Rollo* (G.R. No. 180674), pp. 1059-1064.

[10] *Id.*, G.R. No. 180674, pp. 436-494; The dispositive portion of the decision states:

> WHEREFORE, premises considered, the complaint, dated July 18, 2006, filed by Olympic Mines and Development Corporation, as represented by Citinickel Mines and Development Corporation, and the earlier Petition, dated June 8, 2006, filed by Olympic Mines and Development Corporation are, as they are hereby given due course.
>
> 1. The Operating Agreement, dated July 18, 2003, by and between Olympic Mines and Development Corporation and Platinum Group Metals Corporation is hereby cancelled and declared as without force and effect.
> 2. The Small Scale Mining Permits SSMP PL W No. 39 and 40, issued under the name of Platinum Group Metals Corporation are, as they are hereby cancelled and withdrawn.
> 3. In order to prevent respondent, their privies and all other persons working in their behalf from further inflicting wanton damage and prejudice to the environment, it is recommended to the Mines Adjudication Board that an order be issued directing that they cease and desist from operating the mining areas subject of this case.
> 4. Enjoining the Mines and Geosciences Bureau and the Environmental Management Bureau, of DENR Region IV-B MIMAROPA to conduct an in depth investigation and accounting of the environmental damage brought upon the areas covered for proper assignment.
>
> SO ORDERED.

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cancelled the Operating Agreement as well as Platinum's SSMPs, and ordered Platinum to cease and desist from operating the subject mining areas.

Through a petition for *certiorari*, Platinum questioned the POA Resolution before the CA; the case was docketed as CA-G.R. SP No. 97288. The appellate court, however, dismissed Platinum's *certiorari* petition,[11] upon finding that Platinum failed to file a motion for reconsideration of the POA Resolution with the Mines Adjudication Board (*MAB*) – the body which has appellate jurisdiction over decisions or orders of the POA pursuant to Section 78 of the Republic Act No. 7942 or the Philippine Mining Act of 1995 (*Mining Act*) – before elevating the case to the CA.

Protesting the dismissal of its *certiorari* petition, Platinum filed before the Court one of the four petitions involved in these consolidated cases – **G.R. No. 181141.** Platinum contends that the non-filing of an appeal (through a motion for reconsideration) with the MAB would be useless, as the POA declared that its decision to cancel the Operating Agreement was not just its own, but also that of the DENR, which includes the MAB. Additionally, Platinum claimed that the POA Resolution[12] was patently illegal, as it contravened the injunctive writs issued in Civil Case No. 4199 (discussed next), thus the immediate need to invoke the appellate court's *certiorari* jurisdiction.

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[11] Resolution dated January 18, 2007, *id.*,G.R. No. 181141, pp. 79-82.

[12] *Supra* note 7; The POA Resolution states in part:

> The preliminary injunction issued by the [RTC] of Palawan, to our mind, should not be made to enjoin the DENR from looking into the allegations of violations of the Operating Agreement and some other environmental issues committed by [Platinum] in the conduct of its operations in the mining areas in Palawan. xxx the DENR cannot be compelled or prevented from doing what it must do under the premises on the simple reason that it was never impleaded or made party in the cases filed by Platinum that resulted in the issuance of the Order dated July 21, 2006 [referring to the injunctive writ issued in Civil Case No. 4199].

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Civil Case No. 4199
and the Injunctive Writs

Civil Case No. 4199 involved a complaint for quieting of title, damages, breach of contract, and specific performance filed by Platinum against Olympic before the RTC of Puerto Princesa, Palawan, Branch 95 on June 14, 2006. The proceedings and the orders issued in this case became the subject of three of the four consolidated petitions now pending with the Court – **G.R. Nos. 178188, 180674, and 183527.** The RTC's narration provides us with a background of Civil Case No. 4199:

> Alleging that Olympic's claims and misrepresentation in the letters dated April 24, 2006 [referring to the termination letter sent by Olympic to Platinum], May 18, 2006 [referring to the letter-complaint of Olympic filed in PMRB Case No. 001-06 which sought the revocation of Platinum's SSMPs], and June 6, 2008 [referring to the letter of Olympic notifying Platinum of its intention to file legal action against Platinum for gross violations of the Operating Agreement], xxx Platinum filed with Branch 95 of the RTC of Puerto Princesa City on June 14, 2006, a complaint to quiet Platinum's title/interest over the subject mining areas, to recover damages and to compel Olympic to perform its obligations under the Operating Agreement.
>
> xxx xxx xxx
>
> **On July 21, 2006, upon xxx Platinum's motion, xxx Blancaflor, in his capacity as the presiding judge of the RTC of Puerto Princesa, Branch 95, issued [an] xxx order in Civil Case No. 4199, granting xxx Platinum's application for the issuance of a writ of preliminary injunction xxx directing Olympic, and its successor-in-interest, xxx Citinickel, to cease and desist from performing any act that would tend to impede, hamper, limit, or adversely affect xxx Platinum's full enjoyment of its rights under the Operating Agreement xxx.**
>
> xxx xxx xxx
>
> Meanwhile, on August 28, 2006, xxx Platinum filed a Motion for Leave to Amend Complaint, attaching thereto the Amended Complaint, which impleaded Olympic's Board of Directors and

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Rockworks Resources Corporation (Rockworks) and the latter's Board of Directors as additional defendants.[13] [Emphasis supplied.]

Olympic sought the dismissal of Platinum's Civil Case No. 4199 through a motion to dismiss where Olympic alleged that the trial court was without jurisdiction to rule on the issues raised in the case. *Olympic contended that the case involved a mining dispute requiring the technical expertise of the POA; accordingly, jurisdiction should be with the POA.* The RTC denied the motion to dismiss in a Resolution dated August 15, 2006. When Olympic failed to secure a reversal of the RTC's August 15 Resolution, it filed an appeal with the CA, docketed as CA-G.R. SP No. 97259. The CA declared that the trial court properly exercised jurisdiction over Civil Case No. 4199 because the main issue therein was whether Platinum had a claim and/or right over the subject mining areas pursuant to the Operating Agreement. The dismissal of its petition before the CA prompted Olympic to elevate the matter with this Court, through a petition for review on *certiorari*, docketed as **G.R. No. 178188.**

Citinickel, for its part, filed its own *certiorari* petition before the CA (CA-G.R. SP No. 99422), and questioned the injunctive writs issued in Civil Case No. 4199. It claimed that the writ of preliminary injunction cannot be enforced against it since it was not impleaded in the case even if it was an indispensable party; Olympic's rights under the Operating Agreement had already been transferred to it by virtue of the June 9, 2006 Deed of Assignment. The appellate court nonetheless dismissed Citinickel's petition, prompting the latter to file an appeal by *certiorari* with this Court, docketed as **G.R. No. 180674.**

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[13] Platinum sought to hold Rockworks and the members of its Board of Directors liable for the patently unlawful acts and/or bad faith under Section 31 of the Corporation Code in directing the affairs of Rockworks. According to Platinum, the Memorandum of Agreement between Olympic and Rockworks showed the intent "to oust Platinum and to take immediate possession and control of the mining areas involved in the Operating Agreement" through the creation of a joint venture company to be known as Citinickel Mines and Development Corporation. Rockworks is one of the stockholders of Citinickel; *rollo* (G.R. No. 183527), pp. 8-9, 13, 25; see p. 2 of Memorandum of Agreement between Olympic and Rockworks, *rollo*, G.R. No. 181141, pp. 164-170.

Polly Dy, as a member of Rockworks' Board of Directors who was impleaded as co-defendant of Olympic in Civil Case No. 4199, filed her own *certiorari* petition (docketed as CA-G.R. SP No. 101544) against the injunctive writs issued by the trial court in the same case. Acting favorably for Polly Dy, the CA directed the issuance of a writ of preliminary injunction against the RTC of Puerto Princesa, Branch 95, enjoining it from conducting further proceedings in Civil Case No. 4199. Through a petition for *certiorari*, docketed as **G.R. No. 183527**, Platinum asks the Court to annul the writ of preliminary injunction issued by the CA in CA-G.R. SP No. 101544.

Civil Case No. Q-07-59855

Notwithstanding the injunctive writ issued in Civil Case No. 4199 ordering Olympic/Citinickel to respect the rights of Platinum under the Operating Agreement (including its right to control, possess, and operate the subject mining areas), Citinickel instituted a *mandamus* petition with the RTC of Quezon City, Branch 100 (docketed as Civil Case No. Q-07-59855), for the DENR Secretary to confiscate and maintain custody and possession of the mineral ores stockpiled at the Palawan Pier until the determination of the rights of Citinickel and Platinum under the Operating Agreement. While the trial court initially issued a *status quo* order, it eventually **dismissed the Citinickel's petition for *mandamus*** in its Decision dated May 4, 2007, for Citinickel's failure to prove a clear legal right on its part to justify the issuance of a *mandamus* writ in its favor, and also **for forum shopping**.[14]

For a more graphic presentation, these cases are presented hereunder in tabular form:

CASE NUMBER	PARTIES	CAUSE OF ACTION	STATUS
Civil Case No. 4181 (RTC Palawan, Branch 52)	*Olympic v. Platinum*	**Complaint for injunction** to enjoin Platinum from continuing	• **May 16, 2006 Order dismissing the complaint for**

[14] *Rollo* (G.R. No. 178188), pp. 635-647.

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		mining activities filed on April 25, 2006	**injunction** after finding that unilateral termination of the Operating Agreement was illegal (***Branch 52 Order***). • Olympic did not appeal the Order.
PMRB Case No. 001-06	*Olympic v. Platinum*	Complaint for revocation of Platinum's SSMPs dated May 18, 2006	• August 16, 2006 Resolution dismissing complaint on the basis of the Branch 52 Order, which had become final and executory.
Civil Case No. 4199 (RTC Palawan, Branch 95)	*Platinum v. Olympic*	Complaint for quieting of title, damages, and specific performance	• July 21, 2005 Order granting the writ of preliminary injunction against Olympic and Citinickel • August 15, 2006 Order denying Olympic's motion to dismiss/suspend proceedings
DENR POA Case No. 2006-01-B	*Olympic v. Platinum*	Petition to cancel Operating Agreement and revoke Platinum's SSMPs dated June 8, 2006	• June 20, 2006 Notice of Withdrawal filed by Olympic
Civil Case No. 06-0185 (RTC Paranaque)	*Citinickel v. Platinum*	Complaint to rescind Operating Agreement dated June 21, 2006	• December 22, 2006 Order dismissing complaint on the

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			ground of **forum shopping and improper venue** • Citinickel did not appeal the Order.
PMRB Case No. 002-06	*Citinickel v. Platinum*	Petition to cancel Platinum's SSMPs dated July 12, 2006	• September 12, 2006 Resolution dismissing the petition on the basis of the injunctive writ issued in Civil Case No. 4199 and **the forum shopping committed by Citinickel**.
DENR POA Case No. 2006-02-B	*Citinickel v. Platinum*	Complaint to cancel Operating Agreement and to issue injunction against Platinum dated July 19, 2006	• **October 30, 2006 Resolution** cancelling OA and SSMP of Platinum **(*POA Resolution*)**
EMB letter-complaints filed as DENR EMB Case No. 8253	*Citinickel v. Platinum*	Complaint to cancel ECCs issued to Platinum dated July 31, 2006	• Elevated to DENR Secretary by Citinickel on account of alleged inaction of EMB • Sept 25, 2006 Order of DENR Secretary cancelling the ECCs issued to Platinum • Nov 22 Order denying MR of Platinum • Feb 26, 2007 Decision of the

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			Office of the President reversing DENR Secretary's Order that cancelled the ECCs
Civil Case No. Q-07-59855 (RTC Quezon City, Branch 76)	*Citinickel v. DENR*	Petition for *mandamus* to compel DENR Secretary to confiscate and hold mineral ores stockpiled in Palawan pier	• May 4, 2007 Order dismissing the petition **for lack of merit and forum shopping.**

THE PETITIONS

G.R. No. 178188 on Jurisdiction and Venue in Civil Case No. 4199

In its petition before the Court,[15] Olympic assails the CA Decision[16] dated February 28, 2007 in CA-G.R. SP No. 97259, in which the appellate court affirmed the October 4,[17] and 5[18] 2006 Orders of the RTC of Puerto Princesa, Palawan in Civil Case No. 4199. The CA declared that the trial court properly exercised jurisdiction over Platinum's complaint in Civil Case No. 4199 because the main issue raised therein was whether

[15] Petition for review on *certiorari* under Rule 45 of the Rules of Court; dated June 20, 2007; *rollo* (G.R. No. 178188), pp. 3-37.

[16] *Supra* note 1.

[17] The RTC Order dated October 4, 2006 denied Olympic's motion for reconsideration of the RTC Orders of July 21, 2006 (granting Platinum's application for writ of preliminary injunction) and July 31, 2006 (approving the bond for the writ of preliminary injunction).

[18] The RTC Order dated October 5, 2006 denied Olympic's motion for reconsideration of the RTC Oder dated August 15, 2006 (denying Olympic's motion to dismiss and suspend the proceedings).

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Platinum had a claim and/or right over the subject mining areas, pursuant to the Operating Agreement, and the resolution of this issue did not require the technical expertise of the POA. Moreover, the CA declared that venue was properly laid in the RTC of Puerto Princesa (where the disputed mining areas are located) because it was an action affecting an interest in real property that was commenced and tried in a court that has jurisdiction over the area of the real property. Lastly, the CA found that the lower court had not abused its discretion when it issued the writ of preliminary injunction prayed for by Platinum. Olympic's motion for reconsideration of the CA's decision was denied in the May 30, 2007 Resolution of the CA for lack of merit.

Olympic however asserts that it is the POA which has exclusive jurisdiction over the complaint filed by Platinum in Civil Case No. 4199 because the case involves a mining dispute that requires the technical expertise of the POA. Olympic additionally contends that the complaint is a personal action because Platinum sought a declaration that it did not violate the Operating Agreement, and was asking its enforcement; as a personal action, the case should have been filed in the place where either the plaintiff or the defendant resides, at the election of the plaintiff, and not the court where the property is located.

Platinum, on the other hand, opposes Olympic's contentions, claiming that Olympic itself had already recognized the authority of the trial court to resolve the dispute by instituting Civil Case No. 4181 before the RTC of Puerto Princesa, Branch 52 (the injunction case filed by Olympic against Platinum that was dismissed for lack of merit). Incidentally, Platinum points out that Olympic had committed forum shopping because aside from Civil Case No. 4181, it filed several other administrative cases, all grounded on Platinum's alleged violation of the Operating Agreement.

With regard to the issue of venue, Platinum claims that its principal objective in instituting Civil Case No. 4199 was to retain possession of the subject mining areas – it was therefore a real action properly filed in the Puerto Princesa court that had jurisdiction over the areas.

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G.R. No. 183527 on the Injunction against the Proceedings in Civil Case No. 4199

While the jurisdiction of the RTC of Puerto Princesa, Branch 95 was upheld by the CA's Special Fifth Division in CA-G.R. SP No. 97259, the 15th Division of the appellate court, on the other hand, enjoined (through a Resolution[19] dated March 2, 2008, in CA-G.R. SP No. 101544) the same trial court from conducting further proceedings in Civil Case No. 4199 and from implementing its Orders dated July 21, 2006,[20] October 26, 2006,[21] and April 13, 2007.[22]

In assailing the CA's 15th Division's Resolution dated March 2, 2008 (through the present petition for review on *certiorari*),[23] Platinum principally argues that Polly Dy – the petitioner in CA-G.R. SP No. 97259 – had no standing to question the injunctive writs issued in Civil Case No. 4199 because none of the writs were directed against Polly Dy. Additionally, Polly Dy did not file a motion for reconsideration of the assailed Orders of the trial court, rendering her CA *certiorari* petition fatally defective for being premature.

G.R. No. 180674 on Citinickel's inclusion in the injunctive writs issued in Civil Case No. 4199

Citinickel questions the CA Decision[24] in CA-G.R. SP No. 99422, which dismissed for lack of merit its petition for *certiorari*,

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[19] *Rollo,* G.R. No. 183527, pp. 37-40.

[20] Granting Platinum's application for a writ of preliminary injunction.

[21] Granting Platinum's motion to amend complaint for the purpose of impleading additional defendants (namely, the members of the Board of Directors of Rockwell).

[22] Granting Platinum's application for an extended writ of preliminary injunction.

[23] *Rollo,*G.R. No. 183527, pp. 3-21.

[24] Dated November 20, 2007; *rollo,* G.R. No. 180674, pp. 889-911.

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assailing the July 21, 2006[25] and April 13, 2007[26] Orders of the RTC in Civil Case No. 4199.

Citinickel assails the CA Decision through this petition,[27] asserting that by virtue of the Deed of Assignment dated June 9, 2006, it became an assignee of Olympic – before Platinum filed its complaint (Civil Case No. 4199) on June 14, 2006, and thus claims to be an indispensable party to the case. Since it was not impleaded as a party to Civil Case No. 4199, it cannot be bound by the writ of preliminary injunction issued by the trial court; for the same reason, the POA Resolution issued in the case filed by Citinickel cannot be deemed to have contravened the writ of preliminary injunction issued in Civil Case No. 4199.

Platinum counters that the injunction orders are binding on Citinickel because the assignment of Olympic's rights to Citinickel

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[25] *Supra* notes 14 and 16.

[26] *Supra* note 18; the dispositive portion of the extended writ of preliminary injunction states:

WHEREFORE, premises considered, this Court GRANTS the issuance of an expanded writ of preliminary injunction as prayed for, to wit:

Directing the DENR, Office of the Secretary of the DENR, the Secretary of DENR, as well as the Panel of Arbitrators, Environmental Management Bureau (EMB) and the Mines and Geosciences Bureau (MGB), their agents, representatives or persons entities acting on their behalf or under their authority, control or influence, from interfering in any way with the possession, control and/or operation of the Pulot Nickel Mine and the Toronto Nickel Mine, including the custody, control and disposition of the mineral ores extracted pursuant to the Operating Agreement and stockpiled at the stockyards; and further, from performing any act which will disturb the status quo; and from doing any act – including the implementation/enforcement of the Order dated 27 February 2007 issued by Judge Alexander Balut and the Memorandum dated 27 February 2007 issued by the Secretary of the DENR – that will tend to impede, hamper, limit or adversely affect the full enjoyment by Platinum of its rights under the Operating Agreement.

The plaintiff-movant is directed to increase its bond from ₱2,000,000.00 to ₱2,500,000.00 effective immediately to answer for any damage that may arise as a result of the enforcement of the original writ of preliminary injunction and this new expanded writ of preliminary injunction.

IT IS SO ORDERED.

[27] Dated December 26, 2007; *rollo,* G.R. No. 180674, pp. 10-50.

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only took effect upon the approval thereof by the Regional Director, which approval was issued only in September 6, 2006 or after Civil Case No. 4199 was filed on June 14, 2006. Thus, Citinickel is a successor-in-interest by title, and is therefore bound by the injunction orders issued in the case. Platinum also alleges that Citinickel merely stepped into the shoes of Olympic and acted as the latter's agent.

G.R. No. 181141 on the validity of the POA Resolution

In its Petition for Review,[28] Platinum assails the CA Resolution[29] in CA-G.R. SP No. 97288, which dismissed its petition for *certiorari* questioning the POA Resolution for having failed to previously file a motion for reconsideration with the POA. The CA also denied Platinum's motion for reconsideration in its Resolution[30] dated December 21, 2007.

Platinum claims that it chose not to file a motion for reconsideration of the POA Resolution in DENR Case No. 2006-02-B because that motion would have been denied by the POA as it had already affirmed the cancellation of Platinum's ECCs in DENR Case No. 8253. Further, an appeal to the MAB would also be useless because the POA had declared that the decision to cancel the Operating Agreement and the SSMPs was not entirely its (POA's) own, but also that of the DENR, which includes the MAB. Platinum contends that it had to file the petition for *certiorari* because the POA Resolution was patently illegal as it effectively nullified the injunctive writ previously issued by the lower court in Civil Case No. 4199.

THE COURT'S RULING

The key matter in resolving all four petitions involves the issue of **jurisdiction** – that is, which body has the authority to hear and decide the dispute between Olympic/Citinickel and Platinum, as parties to the operating agreement.

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[28] Dated February 28, 2008, *rollo*, G.R. No. 181141, pp. 14-78.

[29] Dated January 18, 2007, *rollo*, G.R. No. 181141, pp. 79-82.

[30] *Rollo*, G.R. No. 181141, pp. 84-87.

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Jurisdiction of the Panel of Arbitrators

Settled is the rule that jurisdiction of the court over the subject matter is determined by the allegations of the complaint.[31]

In Civil Case No. 4199, Platinum alleges in its complaint[32] the following:

3. Plaintiff is engaged in mining operations. Defendant holds mining rights/claims over the Toronto Nickel Mine in the Municipality of Narra and the Pulot Nickel Mine in the Municipality of Espanola (hereinafter, the "subject mining areas") in Palawan.

4. On 18 July 2003, plaintiff, as the SECOND PARTY, and defendant, as the FIRST PARTY, entered into an Operating Agreement. The said Agreement vested plaintiff with, among others, the following rights and interests:

    2.1 To enter, occupy, possess, explore, develop, utilize and control the mineral properties subject to Section 2, hereof;

    2.2 To conduct mining and all subsidiaries, associated and other related operations in the mineral properties at a rate it deems appropriate;

    2.3 To mill, beneficiate and process the ores by appropriate methods or process within or outside the area of the mineral properties;

    xxx xxx xxx

5. Section 23 of the Operating Agreement states that it shall be effective for twenty-five (25) years or for the life of the subject mining areas. Under Section 19 thereof, it may only be [pre]terminated for gross violations of its terms and provisions.

    xxx xxx xxx

9. On 24 April 2006, plaintiff was shocked when it received a letter of even date from defendant's counsel alleging that

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[31] See *Nell & Co. v. Cubacub*, G.R. No. L-20843, June 23, 1965, 14 SCRA 419; *Time, Inc. v. Reyes et al*., L-28882, May 31, 1971, 39 SCRA 303.

[32] *Rollo,* G.R. No. 180674, pp. 210-216.

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plaintiff has committed gross violations of the Operating Agreement, informing plaintiff of its immediate termination and the suspension of the mining operations, and demanding that plaintiff surrender the possession of the subject mining areas.

xxx xxx xxx

17. Defendant claims and declares in the letter dated 24 April 2006, the complaint dated 25 April 2006, the letter dated 18 May 2006 and the letter dated 8 June 2006 that it has already terminated the Operating Agreement. As ground for termination as well as purported basis for its complaint and its application for TRO, defendant insidiously alleged that plaintiff committed gross violations of the Operating Agreement.

18. Defendant's claims and misrepresentations in said letters and complaint have cast a cloud on plaintiff's rights and interests over the subject mining areas. The said letters and complaint unequivocally give the impression that, since the Operating Agreement has already been terminated, plaintiff no longer possesses any right or interest over the subject mining areas.

xxx xxx xxx

21. Defendant's actions are clearly in breach of the Operating Agreement. To repeat, the Operating Agreement provides that it may only be [pre]terminated for gross violations of its terms and provisions. As stated above, however, defendant's allegations with respect to plaintiff's violations of the terms and conditions of the Operating Agreement are merely imagined.

22. In any case, even assuming *in gratia argumenti* that there is factual basis for defendant to terminate the Operating Agreement, defendant's termination thereof is clearly bereft of legal basis and in breach of the Operating Agreement. Section 20 unambiguously provides:

> The FIRST PARTY may terminate this agreement by giving thirty (30) days notice to the SECOND PARTY based on gross violation of the terms and conditions of this agreement.

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23. Clearly, the Operating Agreement may only be considered terminated after the lapse of 30 days. In the instant case, defendant served plaintiff the letter dated 24 April 2006 on even date and filed a complaint the following day. The complaint if filed and the TRO it caused to be issued were thus premature and violative of the Operating Agreement.

From these allegations, we learn that Platinum had rights and interest in real property, specifically, the right to possess and to mine the subject mining areas for a certain period of time, as stated in the Operating Agreement. Olympic, however, had cast a cloud on its interest when: (a) Olympic sent Platinum a letter claiming that it had already terminated the Operating Agreement; (b) Olympic filed a complaint with the RTC Puerto Princesa, Palawan, Branch 52 (docketed as Civil Case No. 4181), asking the court to enjoin Platinum from conducting mining operations under the Operating Agreement, since this Agreement had already been unilaterally terminated by Olympic; and (c) Olympic wrote to the Governor of Palawan to inform him that its Operating Agreement with Platinum was already terminated and to request that the Governor revoke Platinum's SSMPs. Olympic's act clearly indicated its intent to deprive Platinum of its rights, prompting the latter to file the complaint to quiet its title or interest in the subject mining areas and remove all doubts as to the Agreement's continuous effectivity. Platinum's primary objective was to protect its interest in the subject mining areas covered by the Operating Agreement, specifically, under Section 2.12 and 3.4, both are obliged "to maintain the validity and subsistence of the mining rights subject of the agreement."[33] It is thus obvious that the complaint falls within the ambit of the RTC's original jurisdiction, to the exclusion of all other judicial or quasi-judicial bodies.[34]

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[33] *Supra* note 5, p. 4.

[34] Batas Pambansa Bilang 129, as amended by RA No. 7691. The relevant provision states:

> Sec. 19. *Jurisdiction in civil cases*.— Regional Trial Courts shall exercise exclusive original jurisdiction:
>
> xxx xxx xxx

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Olympic, through its petition in G.R. No. 178188, contends that jurisdiction should instead be with the POA. It posits that to fall under the jurisdiction of the POA, the dispute must necessarily involve questions of facts or matters requiring the application of technological knowledge and expertise or which needs the interpretation and the application of particular knowledge and expertise possessed by the members of the Panel. It reads Platinum's complaint in Civil Case No. 4199, to be a matter involving a mining dispute that raises questions of facts or matters requiring the application of technical knowledge and expertise of the POA – an interpretation that we cannot sustain in light of the clear wording of the law.[35]

The POA's jurisdiction is set forth in Section 77 of the Mining Act:

> Sec. 77. *Panel of Arbitrators.*— xxx. 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 permits;**
>
> 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. [Emphasis supplied.]

Section 77, paragraphs (a) and (b) are the provisions principally invoked in this case to confer jurisdiction over the dispute between Olympic/Citinickel and Platinum – provisions which, upon closer inspection of the law and jurisprudence, belie Olympic's and Citinickel's contentions.

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(2) In all civil actions which involve title to, or possession of, real property, or any interest therein, except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts; x x x

[35] *Rollo*, G.R. No. 178188, pp. 13-25.

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In *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation, et al.*,[36] this Court, speaking through Justice Velasco, specified the kind of disputes that fall under Section 77(a) of the Mining Act:

> The phrase "disputes involving rights to mining areas" refers to any **adverse claim, protest, or opposition to an application for a mineral agreement.**
>
> xxx xxx xxx
>
> [T]he power of the POA to resolve any adverse claim, opposition, or protest relative to mining rights under Section 77 (a) of RA 7942 is confined only to **adverse claims, conflicts, and oppositions *relating to* applications for the grant of mineral rights**. xxx. Clearly, **POA's jurisdiction over "disputes involving rights to mining areas" has nothing to do with the cancellation of *existing* mineral agreements.** [Emphasis supplied.]

In so ruling, the Court read Section 77 (a) in relation with Sections 38 and 41 of DENR Administrative Order No. 96-40 (Revised Implementing Rules and Regulations of the Mining Act or *RIRR*), which provide:

> Sec. 38. 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 or 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 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

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

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days therefrom.

xxx xxx xxx

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 Within fifteen (15) working days from 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.]

Sections 38 and 41 of the RIRR pertain to the *procedure involved in approving mineral agreements*. These provisions are largely lifted from Sections 48 and 53 of PD 463 (or the Mining Resources Development Decree), except that instead of the POA, it was the Director of Bureau of Mines (now Mines and Geosciences Bureau or *MGB*) who previously had the authority to rule on **pre-approval protests or adverse claims**.

To properly fall within the POA's jurisdiction under Section 77 (a) of the Mining Law, the dispute must:

1. refer to an *adverse claim, protest, or opposition to an application* for a **mineral agreement**; and
2. be filed *prior to the approval* by the DENR Secretary of the **mineral agreement**.

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Under these terms, Section 77 (a) established a cut-off period (*i.e.*, before the approval of the mineral agreement) when the POA's jurisdiction may be properly invoked, and this period had long lapsed insofar as the dispute between Citinickel and Platinum is concerned, as Olympic's mining lease contract and its Operating Agreement with Platinum had already been approved by the Government. Accordingly, invocation of the POA's jurisdiction under Section 77(a) finds no application in this case.

Neither will POA be vested with jurisdiction through Section 77(b), as the nature of the agreement between Olympic and Platinum is not the "mineral agreement" contemplated under the law. The term "mineral agreement" has a specific definition under the Mining Act, Section 3 (ab) thereof states:

Section 3. *Definition of Terms.*— xxx

(ab) "Mineral Agreement"— refers to a contract between the government and a contractor, involving mineral production-sharing agreement, co-production agreement, or joint-venture agreement.

Quite obviously, the Operating Agreement is not "a contract between the government and a contractor";[37] **instead, it is *a purely civil contract between two private entities* – one of whom happens to be a party to a mineral agreement with the government.** While the enforcement of the terms of an operating agreement would necessarily *relate to* an existing and approved mineral agreement (as may be inferred from Section 4 of DENR Memorandum Order No. 2003-08),[38] this however

[37] Defined in Section 3(g) of the Mining Act as a "qualified person acting alone or in consortium, who is a party to a mineral agreement or to a financial or technical assistance agreement."

[38] Section 4. *Approval of Memorandum of Agreement/Option Agreement/ Operating Agreement and other Similar Forms of Agreement*.— Memorandum of Agreement/Option Agreement/**Operating Agreement** and other similar forms of Agreement, ***except involving transfer/assignment of mining rights*, entered into *involving* an approved Exploration Permit, Mineral Agreement, Financial or Technical Assistance Agreement, or any other mining permit under Republic Act No. 7942 or the Philippine Mining Act of 1995, shall be registered with the MGB Central Office**/

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does not make the two concepts the same, nor does it make an operating agreement a specie of the mineral agreements contemplated under the Mining Act. Section 26 of the Mining Act[39] states that a mineral agreement may be in the form of a mineral production sharing agreement, a co-production agreement or a joint-venture agreement, and does not include an operating agreement in the enumeration. Apart from this, the Mining Act and the various administrative issuances treat these two separately by providing for different requirements, rules, and procedures

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RO concerned **and shall be subject to the approval of the MGB Director** upon evaluation and recommendation by the RO concerned.

Memorandum of Agreement/Option Agreement/Operating Agreement and other similar forms of Agreement entered into involving an application for EP, MA, FTAA, or any other mining permit application, shall be registered with the MGB Central Office/RO concerned and shall form part of the supporting documents of a mining application, subject to the evaluation of the MGB Central Office/RO concerned. Such agreement shall be deemed approved upon approval of the pertinent mining application. (Emphasis supplied)

[39] Section 26. *Modes of Mineral Agreement*.— For purposes of mining operations, **a mineral agreement may take the following forms** as herein defined:

(a) Mineral production sharing agreement - is an agreement where the Government grants to the contractor the exclusive right to conduct mining operations within a contract area and shares in the gross output. The contractor shall provide the financing, technology, management and personnel necessary for the implementation of this agreement.

(b) Co-production agreement— is an agreement between the Government and the contractor wherein the Government shall provide inputs to the mining operations other than the mineral resource.

(c) Joint-venture agreement— is an agreement 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.

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. In addition, the contractor may be allowed to convert his agreement into any of the modes of mineral agreements or financial or technical assistance agreement covering the remaining period of the original agreement subject to the approval of the Secretary. (Emphasis supplied)

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governing their application, approval, and cancellation. **Thus, to contend that a dispute involving operating agreements can be classified as a "dispute involving mineral agreements or permits" stretches the definition of "mineral agreement" beyond the clear terms of the law.**

Indeed, the adoption of a definite meaning for "mineral agreement" reveals the intent to remove from the DENR, through the MGB, the jurisdiction over disputes involving civil contracts on mining rights. Presidential Decree No. 1281[40] enumerates cases that fall under the Bureau of Mines' jurisdiction:

> Section 7. In addition to its regulatory and adjudicative functions over companies, partnerships or persons engaged in mining exploration, development and exploitation, the Bureau of Mines shall have original and exclusive jurisdiction to hear and decide cases involving:
>
> (a) a mining property subject of *different agreements* entered into by the claim holder thereof with several mining operators;
>
> (b) xxx
>
> (c) cancellation and/or enforcement of *mining contracts* due to the refusal of the claimowner/operator to abide by the terms and conditions thereof. [Emphasis supplied.]

Although Section 77 (d) of the Mining Act[41] has transferred to the POA jurisdiction over disputes pending before the Bureau of Mines and the DENR, Section 77 (b) did not adopt the wording of Section 7, paragraphs (a) and (c) of PD No. 1281 so as to include all other forms of contracts – public or private – involving mining rights; Section 77 (b) in relation to Section 3 (ab) of the Mining Act did not include a general catch-all phrase to cover other agreements involving mining rights similar to those in Section 7, paragraphs (a) and (c) of PD No. 1281. Instead, the Mining Act, through the above-quoted Sections 3 (ab) and 26, has limited the jurisdiction of the POA, as successor of the

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[40] Revising Commonwealth Act No. 136, creating the Bureau of Mines, and for other purposes.

[41] See p. 21 of this Decision.

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adjudicatory functions of the Bureau of Mines, to mineral agreements between the government and the private contractor. Otherwise stated, while disputes between parties to any mining contract (including operating agreements) may previously fall within the Bureau of Mines' jurisdiction under Section 7 (a) or (c) of PD No. 1281, it can no longer be so placed now within the authority of the POA to settle under Section 77 (b) of the Mining Law because its jurisdiction has been limited to the resolution of disputes involving *public* mineral agreements.

Parenthetically, the "permit" referred to in Section 77(b) of the Mining Act pertains to exploration permit, quarry permit, and other mining permits recognized in Chapters IV, VIII, and IX of the Mining Act. An operating agreement, not being among those listed, cannot be considered as a "mineral permit" under Section 77 (b).

Since the Operating Agreement is not the mineral agreement contemplated by law, the contention that jurisdiction should be with the POA under Section 77(b) of the Mining Act cannot be legally correct. **In plainer terms, no jurisdiction vests in the POA under the cited provision because the Operating Agreement is not the "mineral agreement" that Section 77(b) refers to.**

Even an invocation of Section 77(c) of Mining Act (referring to "disputes involving surface owners, occupants and claim-holders/concessionaires") would not suffice to confer jurisdiction over the dispute to the POA. Surface-owners, occupants, and concessionaires refer to owners or occupants of the real property affected by the mining activities conducted by the claim-holders/ concessionaires (entities which are holding mining rights granted by the government).[42] Neither Citinickel nor Platinum falls under this classification.

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[42] This definition can be inferred from a reading of Section 105 of the RIRR, which states:

Section 105. *Entry Into Lands*—The holder(s) of mining right(s) shall not be prevented from entry into its/their contract/mining area(s) for the purpose(s) of exploration, development and/or utilization: *Provided*, That written notice(s) at its/their registered address(es) was/were sent to and duly received by the **surface owner(s) of the land(s), occupant(s) and concessionaire(s)** thereof

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Additionally, the Court notes that both Olympic and Citinickel have previously recognized the RTC's jurisdiction to decide the dispute when they filed civil cases before the trial courts of Palawan[43] and Parañaque,[44] respectively, for the cancellation of the Operating Agreement on account of Platinum's alleged gross violations. By doing so, both Olympic and Citinickel acknowledged the authority and jurisdiction of the trial court to resolve their dispute with Platinum. Not only did they acknowledge this jurisdiction, they as well failed to appeal the decisions rendered by the trial courts in these cases. Thereby, they accepted the binding effect of the trial court decision, and – more importantly – recognized the trial court's authority to rule on their dispute with Platinum regarding the Operating Agreement. In other words, they are now **estopped from claiming that the POA, rather than the trial court, has the sole and exlcusive authority to resolve the issue of whether the Operating Agreement may be rescinded for Platinum's alleged violations.**

Olympic also raises the issue of venue: since one of Platinum's causes of action in Civil Case No. 4199 was specific performance

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and that a bond is posted in accordance with Section 108 hereof.

If the surface owner(s) of the land, occupant(s) or concessionaire(s) thereof can not be found, the Permittee/Permit Holder/Contractor or concessionaire shall notify the concerned Regional Director, copy furnished the concerned local officials in case of private land or the concerned Government agency in case of concessionaires, attaching thereto a copy of the written notice and a sworn declaration by the holder(s) of mining right(s) that it/they had exerted all efforts to locate such surface owner(s)/occupant(s)/concessionaire(s). Such notice(s) to the concerned Regional Director shall be deemed notice(s) to the surface owner(s) and concessionaire(s).

In cases where the surface owner(s) of the land(s), occupant(s) or concessionaire(s) thereof refuse(s) to allow the Permittee/Permit Holder/ Contractor entry into the land(s) despite its/their receipt(s) of the written notice(s) or refuse(s) to receive said written notice(s) or in case of disagreement over such entry, **the Permittee/Permit Holder/Contractor shall bring the matter before the Panel of Arbitrators for proper disposition.** [Emphasis supplied.]

[43] Civil Case No. 4181; see p. 5 of this Decision.

[44] Civil Case No. 06-0185, see p. 6 of this Decision.

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in Civil Case No. 4199, Olympic claims that Platinum's action was actually a personal one that should have been filed either in Olympic's or in Platinum's place of residence, *i.e.*, in Manila or in Makati City, respectively, and not in Puerto Princesa, Palawan.

This contention however is negated by the allegations made by Platinum in its complaint to quiet title, filed before the RTC of Puerto Princesa, Palawan. To reiterate, according to Platinum, it had been peacefully exercising its rights under the Operating Agreement since 2003. However, Olympic cast a cloud on its interest under the Operating Agreement through its various actions, which gave the public the impression that the Operating Agreement had already been terminated, and jeopardized Platinum's right to possess and conduct mining operations in the subject mining areas. Thus, Platinum asked the court to remove this cloud on its rights over the subject mining areas.

The controlling factor in determining venue for cases is the primary objective for which said cases are filed.[45] As we had earlier stated, Platinum's primary objective in filing the complaint is to protect its interest in the subject mining areas, although it joined its claims of breach of contract, damages, and specific performance in the case. In any event, the Rules of Court allow joinder of causes of action in the RTC, provided one of the causes of action (in this case, the cause of action for quieting of title or interest in real property located in Palawan) falls within the jurisdiction of said court and venue lies therein.[46] **In**

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[45] *Go v. United Coconut Planters Bank*, G.R. No. 156187, November 11, 2004, 442 SCRA 264.

[46] RULES OF COURT, Rule 2, Sections 5 and 6 state:

> **Section 5.** *Joinder of causes of action.* — A party may in one pleading assert, in the alternative or otherwise, as many causes of action as he may have against an opposing party, subject to the following conditions:
>
> (a) The party joining the causes of action shall comply with the rules on joinder of parties;
>
> (b) The joinder shall not include special civil actions or actions governed by special rules;

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fine, there is absolutely no reason to disturb the CA's findings that venue was properly laid in the Palawan court.

In light of these, **the Court affirms the jurisdiction of the RTC of Puerto Princesa, Palawan, Branch 95, and accordingly dismiss Olympic's petition for review on *certiorari* in G.R. No. 178188.**

Our conclusion on the trial court's authority to rule on Civil Case No. 4199 necessarily invalidates the injunctive writ issued by the CA in CA-G.R. SP No. 101544 against the continuance of the proceedings in Civil Case No. 4199. **We thus grant Platinum's petition in G.R. No. 183527.** Moreover, the Court agrees with Platinum's contention that Polly Dy had no standing to assail the injunctive writs issued as these were not directed against her; her petition for *certiorari* before the CA (CA-G.R. SP No. 101544) should have been dismissed.

Injunctive Writ against Citinickel, as Successor-in-Interest of Olympic

In G.R. No. 180674, Citinickel mainly argues it cannot be bound by the injunctive writs issued in Civil Case No. 4199 as it was not impleaded in the case, despite the fact that the Deed of Assignment was executed before Civil Case No. 4199 was instituted by Platinum, thus making it an indispensable party. Citinickel further claims that the POA Resolution had already attained finality when the CA dismissed Platinum's petition for *certiorari* questioning the POA Resolution in its January 18, 2007 Resolution.

> **(c) Where the causes of action are between the same parties but pertain to different venues or jurisdictions, the joinder may be allowed in the Regional Trial Court provided one of the causes of action falls within the jurisdiction of said court and the venue lies therein;** and
>
> (d) Where the claims in all the causes action are principally for recovery of money, the aggregate amount claimed shall be the test of jurisdiction.
>
> **Section 6.** *Misjoinder of causes of action*. — Misjoinder of causes of action is not a ground for dismissal of an action. A misjoined cause of action may, on motion of a party or on the initiative of the court, be severed and proceeded with separately. [Emphasis supplied.]

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We disagree.

In this case, one fact resonates and remains unrebutted – the transfer of Olympic's rights to Citinickel was done surreptitiously, *via* the Deed of Assignment dated June 9, 2006, without the knowledge or consent of Platinum. Thus, when Platinum instituted Civil Case No. 4199 on June 14, 2006 – five days after the execution of the Deed of Assignment – Platinum was not notified of the assignment or even of the earlier Memorandum of Agreement between Olympic and Rockworks, contrary to the terms of Section 13 of the Operating Agreement which expressly requires any party transferring or assigning its rights under the Operating Agreement to a third party to inform the original party of the transfer or assignment. Section 13 of the Operating Agreement states:

> The rights and interests of either [Olympic] or [Platinum] in and under this Agreement are assignable and/or transferrable, in whole or in part, to persons or entities qualified xxx **provided that the rights of both of the parties under this Agreement are preserved and maintained, unaffacted or unimpaired,** and **provided further that the assignee undertake to be bound by all the provisions of this Agreement, provided furthermore that the assigning party shall duly notify in writing the other party of such proposed assignment and/or transfer before the actual assignment and/or transfer is done.** [Emphasis supplied.]

Even if Platinum knew of the assignment/transfer, it was not bound to include Citinickel in the complaint because the assignment/transfer of a mineral agreement application would, by law, take effect only *after* the approval of the DENR Secretary or his representative. Section 40 of DENR Administrative Order No. 96-40 (Implementing Rules and Regulations of the Mining Act), which states:

> Section 40. *Transfer or Assignment of Mineral Agreement Application.*— Transfer or assignment of Mineral Agreement applications shall be allowed **subject to the approval of the Director/concerned Regional Director taking into account the national interest and public welfare**: *Provided*, That such transfer or assignment shall be subject to eligibility requirements and shall not be allowed in cases involving speculation. [Emphasis supplied.]

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The provision is clear – any transfer or assignment of a mineral agreement application is still subject to the approval of the Director of the Mines and Geosciences Bureau or the Regional Director concerned. In determining whether to approve the assignment or not, the Director or Regional Director has to consider the national interest, public welfare, as well as study the eligibility of the party to whom said application is being transferred to. Any assignment of a mineral agreement is thus considered provisional, pending final approval by the Director or Regional Director. Thus, although the Deed of Assignment between Olympic and Citinickel was executed on June 9, 2006, the actual transfer of rights occurred only *after* the Regional Director of the MGB Regional Office No. IV-B had given its approval to the assignment on September 6, 2006, or after Civil Case No. 4199 was filed on June 14, 2006. Accordingly, Citinickel, being a mere successor-in-interest of Olympic, is bound by the questioned injunction order. Even if we disregard the inclusion of Citinickel in the July 16, 2006 Order granting the application for a writ of preliminary injunction, the result would be the same – the injunction imposed on Olympic will similarly bind Citinickel.

Thus, we resolve to dismiss Citinickel's petition for lack of merit.

Validity of the POA Resolution

Platinum's Rule 65 petition praying for the annulment of the POA Resolution was dismissed by the CA in its Resolution dated January 18, 2007 in CA-G.R. SP No. 97288, on the ground that Platinum failed to exhaust administrative remedies by appealing the POA Resolution to the MAB, as provided under the Mining Act.

We disagree with the reasoning of the CA and resolve to overturn its January 18, 2007 Resolution.

The rule of exhaustion of administrative remedies admits of numerous exceptions, such as:

1) when there is a violation of due process;

2) when the issue involved is purely a legal question;

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3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction;

4) when there is estoppel on the part of the administrative agency concerned;

5) when there is irreparable injury;

6) when the respondent is a department secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter;

7) when to require exhaustion of administrative remedies would be unreasonable;

8) when it would amount to a nullification of a claim;

9) when the subject matter is a private land in land case proceedings;

10) when the rule does not provide a plain, speedy and adequate remedy; and

11) when there are circumstances indicating the urgency of judicial intervention.[47]

Platinum's serious allegations amount to circumstances calling for urgent judicial intervention. More importantly, Platinum's allegations essentially attack POA's jurisdiction over Citinickel's complaint for lack or excess of jurisdiction. The CA thus committed a reversible error when it failed to recognize the POA's jurisdictional errors and instead, mistakenly placed its reliance on a procedural technicality.

Going into the merits of G.R. No. 181141, the Court finds that the POA Resolution was issued in disregard of the injunctive writs in Civil Case No. 4199. We have earlier ruled in G.R. No. 180674 that Citinickel, as successor-in-interest of Olympic, became bound by the writ of injunction issued by the trial court, even though it was not formally impleaded as a party when Civil Case No. 4199 was instituted. The injunction prohibited the parties – Citinickel included – from performing "any act

[47] See *Paat v. Court of Appeals*, G.R. No. 111107, January 10, 1997, 226 SCRA 167.

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that will tend to impede, hamper, limit or adversely affect the full enjoyment by [Platinum] of its rights under the Operating Agreement xxx [and] from performing any act which will disturb the status quo." When the POA issued the assailed Resolution rescinding the Operating Agreement and cancelling Platinum's SSMPs at the instance of Citinickel, it clearly went against the prohibition.

Not only was the POA Resolution issued in contravention of the injunctive writ, POA Case No. 2006-02-B (where the Resolution was issued) was instituted in blatant violation of the rules of forum shopping. POA Case No. 2006-02-B was instituted while Citinickel's complaint for cancellation of the Operating Agreement was pending before the RTC of Paranaque (docketed as Civil Case NO. 06-0185). And while there was yet no decisive ruling on the status and validity of the Operating Agreement in these cases, Citinickel had prematurely instituted petitions to cancel Platinum's SSMPs and ECCs before the PMRB (docketed as PMRB Case No. 002-06) and EMB, respectively. Along the same line, Citinickel filed a *mandamus* petition before the RTC of Quezon City (docketed as Civil Case No. Q-07-59855) to compel the DENR Secretary to confiscate and hold possession of the mineral ores of Platinum stockpiled at the Palawan pier. Over and above these cases, Olympic had, prior to the assignment, already instituted similar actions before the same courts and agencies – actions Citinickel is similarly bound as the assignee/ transferee of Olympic.

Both Olympic and Citinickel evidently trifled with the courts and abused its processes by improperly instituting several cases before various judicial and quasi-judicial bodies, one case after another (some even simultaneously filed during the pendency of other cases) once it became evident that a favorable decision will not be obtained in the previously filed case – all of which are focused on the termination of the Operating Agreement and the cancellation of Platinum's mining permits. While a party may avail himself of the remedies prescribed by law or by the Rules of Court, such party is not free to resort to them

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simultaneously or at his pleasure or caprice.[48] **The actions of Olympic and Citinickel, taken separately or collectively, betray a pattern of calculated and intentional forum shopping that warrants denial of the reliefs they pray for.**

In accordance with our finding in G.R. No. 180674 that Citinickel is bound by the injunctive writ issued by the trial court in Civil Case No. 4199, as well as our observation in G.R. No. 178188 that the trial court, not POA, has jurisdiction over Platinum's complaint in Civil Case No. 4199, we can come to no other conclusion than to declare that the POA gravely abused its discretion when it issued the POA Resolution dated October 30, 2006. **Thus, we grant Platinum's petition in G.R. No. 181141, and annul the POA Resolution.**

WHEREFORE, premises considered, we rule as follows:

a) in **G.R. No. 178188** (*Olympic Mines v. Platinum Group Metals Corporation*): Olympic's petition is denied for lack of merit and the assailed CA Decision in *CA-G.R. SP No. 97259* is *AFFIRMED*;

b) in **G.R. No. 183527** (*Platinum Group Metals Corporation v. Court of Appeals*): The assailed CA Resolution in *CA-G.R. SP No. 101544* is *REVERSED* and *SET ASIDE*;

c) in **G.R. No. 180674** (*Citinickel Mines and Development Corporation v. Judge Bienvenido Blancaflor and Platinum Group Metals Corporation*): The questioned CA Decision in *CA-G.R. SP No. 99422* is *AFFIRMED*; and

d) in **G.R. No. 181141** (*Platinum Group Metals Corporation v. Citinickel Mines and Development Corporation*): The CA decision in *CA-G.R. SP No. 97288* is *REVERSED* and *SET ASIDE*. The POEA Resolution, having been issued in violation of a previously issued writ of preliminary injunction, is *ANNULLED* and *SET ASIDE.*

SO ORDERED.

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[48] *Feliciano v. Villasin*, G.R. No. 174929, June 7, 2008, 556 SCRA 348.

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Carpio Morales,[*] *J.,* see separate opinion.

Tinga, J., dissents. See dissenting opinion.

Velasco, Jr., J., joins the dissent of *J.* Tinga.

Leonardo-de Castro,[**] *J.,* see separate opinion.

CONCURRING OPINION

CARPIO MORALES, *J.*:

I concur in the *ponencia* of Justice Arturo D. Brion. I proffer the following grounds to reinforce my concurrence:

On the question of jurisdiction, going by the well-entrenched principle that jurisdiction is determined by the material allegations of the complaint and the law, irrespective of whether the plaintiff is entitled to recover all or some of the reliefs sought, I find that the main issue brought forth by Platinum's complaint for Quieting of Title/Interest and Removal of Cloud, Breach of Contract and Damages, and Specific Performance in Civil Case No. 4199 is the validity of Olympic's unilateral termination of the Operating Agreement. Consistent with the case of *Gonzales* cited by the dissent of *J.* Tinga, this is a *judicial* question as it involves the determination of what the law is and what the legal rights of the parties are with respect to the matter in controversy. The resolution of this question, in turn, affects the parties' title to, possession of, or interest in, the subject real property. Jurisdiction, thus, lies with the trial court and not the Panel of Arbitrators of the Department of Environment and Natural Resources.

Respecting the thesis that forum shopping is a false issue for purposes of adjudicating these consolidated petitions, the same does not merit my concurrence. While indeed there are only

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[*] Designated Acting Chairperson of the Second Division per Special Order No. 618 dated April 14, 2009.

[**] Designated additional member of the Second Division per Special Order No. 619 dated April 14, 2009.

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two cases that spawned these four petitions – Civil Case No. 4199 instituted by Platinum and the complaint with the POA filed by Citinickel – the Court should not reluctantly play deaf and dumb to the fact that many other related cases were consecutively filed by Olympic and Citinickel, acting for each other, in various fora seeking essentially the same reliefs – the nullification of the Operating Agreement between Olympic and Platinum and the surrender of the subject mining areas to either Olympic or Citinickel. The filing of such other related cases is borne by the records and admitted by the parties. As such, it is a proper subject of judicial notice.[1] The proscription against forum shopping and abuse of judicial processes is far too established to even require citation of authority.

I thus vote to GRANT the petitions in G.R. No. 181141 and G.R. No. 183527, and DENY the petitions in G.R. No. 178188 and G.R. No. 180674.

DISSENTING OPINION

TINGA, *J.*:

I respectfully dissent. Contrary to the majority's ruling, the Panel of Arbitrators (POA) has jurisdiction over the complaint filed with it by Citinickel docketed as DENR Case No. 2006-02B. Moreover, the Regional Trial Court (RTC) of Puerto Princesa City, Palawan has no jurisdiction over the action for quieting of title filed by Platinum. And finally, while forum-shopping may be apparent from the factual background of these cases, it ultimately cannot be the cause for dispositive action on the part of this Court, as will be demonstrated forthwith.

I.

I wish to restate the facts behind these cases.

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[1] Section 2, Rule 129 of the Rules of Court provides:

SEC. 2. *Judicial Notice, when discretionary.*— A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or **ought to be known to judges because of their judicial functions**.

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Olympic Mines and Development Corporation (Olympic) is the grantee of mining concessions located in Narra and Española, Palawan, covered by Mining Lease Contracts. It entered into an Operating Agreement dated July 18, 2003 with Platinum Group Metals Corporation (Platinum), whereby, in consideration of a royalty fee of two and a half percent (2½%) of gross revenues, Olympic granted Platinum the exclusive right to conduct mining operations on two portions with a total area of 2,176 hectares of the entire concession for a period of 25 years. Olympic and Platinum applied for and were granted separate Small-Scale Mining Permits (SSMP) and the corresponding Environmental Compliance Certificates (ECC) over their respective areas.

In 2006, Olympic took steps to terminate the Operating Agreement claiming that Platinum violated the terms and conditions thereof. Olympic sought official termination of the Operating Agreement by the Department of Environment and Natural Resources (DENR). It thereafter assigned its rights under the Operating Agreement to Citinickel Mines and Development Corporation (Citinickel) without the knowledge and consent of Platinum.

Spurred by these developments, Platinum filed a complaint to quiet its title/interest over the mining areas docketed as Civil Case No. 4199 in the Regional Trial Court (RTC) of Puerto Princesa City, Palawan, Branch 95. The trial court issued a writ of preliminary injunction directing Olympic and Citinickel to cease and desist from performing any act that would tend to impede, hamper, limit or adversely affect Platinum's full enjoyment of its rights under the Operating Agreement.

This précis encapsulates the present controversy comprising four consolidated petitions. For a fuller comprehension of the case, however, the following narrative by the Court of Appeals in its assailed Decision[1] dated November 20, 2007 in CA-G.R. SP No. 99422, which spawned one of the petitions herein docketed as G.R. No. 180674, is reproduced:

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[1] *Rollo* (G.R. No. 180674), pp. 889-911; Penned by Associate Justice Vicente Q. Roxas with the concurrence of Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia.

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In 1971 and 1980, OLYMPIC was granted by the then Secretary of Natural Resources "Mining Lease Contracts" numbered as PLC-V-544, PCL-V-545, PCL-V-550, MLC-MRD-127, MLC-MRC-128, MLC-MRD-129 and MLC-MRC-130, covering mining areas located in Narra and Española, Palawan.

On July 18, 2003, an "Operating Agreement" was entered into by and between OLYMPIC and private respondent PLATINUM, which granted PLATINUM the exclusive right to control, possess, manage/operate and conduct mining operations and to market or dispose mining products on the Toronto Nickel Mine in the Municipality of Narra with an area of 768 hectares and the Pulot Nickel Mine in the Municipality of Española covering an area of 1,408 hectares, for a period of 25 years in consideration of a royalty fee of 2½% of gross revenues.

On August 21, 1996,[2] OLYMPIC filed an Application for Mineral Agreement denominated as AMA-IVB-040 and AMA-IVB-045 covering the aforesaid mining lease contracts pursuant to Executive Order No. 279.

On January 21, 2004, OLYMPIC and private respondent PLATINUM filed with the Provincial Mining Regulatory Board (PMRB) of Palawan four (4) SSMPs. On November 4, 2004,[3] the Provincial Governor of Palawan approved the application and issued the SSMPs as follows:

1. SSMP-PLW-037 of OLYMPIC located in San Isidro, Narra, Palawan;
2. SSMP-PLW-038 of OLYMPIC located in Pulot, Española, Palawan;
3. SSMP-PLW-039 of PLATINUM located in San Isidro, Narra, Palawan; and
4. SSMP-PLW-040 of PLATINUM located in Pulot, Española, Palawan.

All of the said SSMPs were granted and the corresponding ECCs

[2] The date is stated as August 21, 2006 in the assailed Decision. However, a verification of the records reveals that this date is more accurately, August 21, 1996. *Id*. at 2383.

[3] This date is also erroneously stated as November 4, 2006. *Id*. at 2384.

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were issued, as follows: ECC Nos. 4B-218-PA-2140-2004, 4B-219-PA-2140-2004, 4B-220-PA-2140-2004, and 4B-221-PA-2140-2004.

On April 24, 2006, OLYMPIC sent a letter to private respondent PLATINUM, informing PLATINUM of the immediate and unilateral termination of the "Operating Agreement" and directing PLATINUM to suspend its mining operations and to surrender possession of the mining areas subject of the "Operating Agreement" to OLYMPIC on the ground of gross violations of the "Operating Agreement."

On April 25, 2006, OLYMPIC filed with the RTC of Puerto Princesa City, Branch 52, a complaint for injunction with prayer for the issuance of a writ of preliminary injunction, a writ of preliminary mandatory injunction, and a temporary restraining order (TRO) against private respondent PLATINUM grounded on the alleged gross violations of the "Operating Agreement" by PLATINUM. The said complaint was docketed as Civil Case No. 4181.

On April 26, 2006, Branch 52 of the RTC of Puerto Princesa City issued a TRO, directing private respondent PLATINUM to stop conducting mining operations on the subject mining areas and to stop disposing of its mineral products. In an Order dated April 28, 2006, the same court extended the effectivity of the TRO to twenty (20) days. However, on May 16, 2006, the RTC denied OLYMPIC's application for a writ of preliminary injunction. On May 17, 2006, OLYMPIC filed a Notice of Dismissal. **However, before the filing of the said Notice of Dismissal, Branch 52 of the RTC of Puerto Princesa City had already issued an Order dated May 16, 2006 dismissing the complaint on the ground, among others, that the unilateral termination of the "Operating Agreement" was legally impermissible.**

In a letter-complaint dated May 18, 2006 filed with the PMRB of Palawan, docketed as PMRB Case No. 001-06, OLYMPIC asked for the revocation of the SSMP-PLW-039 and SSMP-PLW-040 of private respondent PLATINUM on the ground of its termination of the "Operating Agreement" because of the alleged gross violations thereof by private respondent PLATINUM. In its Resolution dated August 16, 2006, the PMRB of Palawan dismissed the complaint on the ground that the decision of the RTC of Puerto Princesa City, Branch 52, in Civil Case No. 4181, that the unilateral termination by OLYMPIC of the "Operating Agreement" was illegal, had already become final and executory.

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OLYMPIC sent a letter dated June 8, 2006 to private respondent PLATINUM giving notice to PLATINUM of OLYMPIC's intent to file legal action against PLATINUM for PLATINUM's alleged gross violations of the "Operating Agreement," among others.

Alleging that OLYMPIC's claims and misrepresentations in the letters dated April 24, 2006, May 18, 2006 and June 8, 2006 and in the complaint dated April 25, 2006 had cast doubt on its rights and interests over the subject mining areas, private respondent PLATINUM filed with Branch 95 of the RTC of Puerto Princesa City on June 14, 2006, a complaint to quiet PLATINUM's title/interest over the subject mining areas, to recover damages and to compel OLYMPIC to perform its obligations under the "Operating Agreement," which case was docketed as Civil Case No. 4199.

In a Petition dated June 8, 2006, which was filed by OLYMPIC with the Panel of Arbitrators (POA) of the DENR, Region IV-B, that was docketed as **DENR POA Case No. 2006-01-B**, OLYMPIC also sought the cancellation of the "Operating Agreement" dated July 18, 2003 and the revocation of the SSMPs issued to private respondent PLATINUM. On June 20, 2006, however, OLYMPIC filed a Notice of Withdrawal of the said petition.

Unable to secure a termination of its "Operating Agreement" with private respondent PLATINUM, OLYMPIC, without the knowledge and consent of private respondent PLATINUM, executed a Deed of Assignment on June 9, 2006, transferring its AMA-IVB-040 to petitioner CITINICKEL, which was approved per Order dated September 6, 2006 of OIC, Regional Director Roland de Jesus of the Mines and Geosciences Bureau (MGB), Region IV-B.

On June 21, 2006, petitioner CITINICKEL filed with the RTC of Parañaque City, Branch 258, a complaint for rescission of the "Operating Agreement" dated July 18, 2003, and prayed for damages, which case was docketed as Civil Case No. 06-0185, on the ground of alleged violations by PLATINUM of the terms of the "Operating Agreement." In an Order dated December 22, 2006, the RTC of Parañaque City, Branch 258, dismissed the said complaint on the ground of forum shopping, among others.

On July 12, 2006, petitioner CITINICKEL also filed with the PMRB of Palawan a petition for cancellation of the SSMPs issued to private respondent PLATINUM, which case was docketed as **PMRB Case No. 002-06**, alleging that private respondent PLATINUM had been

divested of its mining rights over the subject mining areas by virtue of the Deed of Assignment of the Operating Agreement executed by OLYMPIC in favor of petitioner CITINICKEL. On September 12, 2006, the PMRB of Palawan issued a Resolution dismissing the petition.

On July 19, 2006, petitioner CITINICKEL, for itself and on behalf of OLYMPIC, filed with the POA, MGB Region IV-B of the DENR, a complaint, which case was docketed as **DENR Case No. 2006-02B**, that sought the issuance of a cease and desist order and a writ of injunction against private respondent PLATINUM and the cancellation of the "Operating Agreement." During the pendency of DENR Case No. 2006-02B, petitioner CITINICKEL filed an appeal with the Secretary of the DENR, docketed as DENR Case No. 8240. **On October 30, 2006, the POA of MGB Region IV-B issued a Resolution canceling the "Operating Agreement" as well as the SSMPs issued to private respondent PLATINUM, and enjoining private respondent PLATINUM to cease and desist from operating the subject mining areas**.

xxx xxx xxx

On July 21, 2006, upon private respondent PLATINUM's motion, public respondent BLANCAFLOR, in his capacity as the Presiding Judge of the RTC of Puerto Princesa City, Branch 95, issued the assailed Order, in Civil Case No. 4199, granting private respondent PLATINUM's application for the issuance of a writ of preliminary injunction, thereby directing OLYMPIC and its successor-in-interest, petitioner CITINICKEL, to cease and desist from performing any act that would tend to impede, hamper, limit or adversely affect private respondent PLATINUM's full enjoyment of its rights under the "Operating Agreement" dated July 18, 2003, the pertinent portion of which provides as follows:

xxx xxx xxx

On August 1, 2006, public respondent BLANCAFLOR issued the corresponding Writ of Preliminary Injunction.

Despite the issuance of the said Writ of Preliminary Injunction, petitioner CITINICKEL filed with the Environmental Management Bureau (EMB) of the DENR, Region IV-B, **two (2) letter-complaints** dated July 31, 2006, for the cancellation of the ECCs issued to private respondent PLATINUM and OLYMPIC. In the other letter-complaint dated August 18, 2006, petitioner CITINICKEL followed up its

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complaint for the cancellation of the ECCs issued to private respondent PLATINUM. While the said letter-complaints were pending with the EMB, petitioner CITINICKEL filed with the Secretary of the DENR an appeal, docketed as **DENR Case No. 8253**, grounded on the alleged "*inaction*" by the EMB.

On September 25, 2006, the Secretary of the DENR issued an Order in DENR Case No. 8253 canceling the ECCs issued to private respondent PLATINUM and OLYMPIC on the ground of private respondent PLATINUM's violation of Condition No. 8 of the ECCs by exceeding the allowable volume of extraction of minerals per year. In an Order dated November 22, 2006, the Secretary of the DENR denied private respondent PLATINUM's motion for reconsideration.

On December 13, 2006, private respondent PLATINUM appealed the September 25, 2006 and November 22, 2006 Orders of the Secretary of the DENR to the Office of the President (OP), docketed as **OP Case No. 06-L-433**.

On January 22, 2007, acting on private respondent PLATINUM's Urgent Motion for Issuance of Cease and Desist Order, the OP issued an Order directing petitioner CITINICKEL, the Secretary of DENR, the POA, the DENR Region IV-B or any of its representatives to cease and desist from issuing any order, resolution or directive implementing the September 25, 2006 and November 22, 2006 Orders of the Secretary of the DENR.

On February 6, 2007, the OP rendered a Decision reversing the September 25, 2006 and November 22, 2006 Orders of the Secretary of the DENR. Petitioner CITINICKEL then filed a Motion for Reconsideration dated February 12, 2007 and an Urgent Motion for Issuance of Cease and Desist Order dated February 15, 2007 to enjoin private respondent PLATINUM from removing the mineral ores stockpiled at the Palawan pier.

During the pendency of the said motions, petitioner CITINICKEL filed with the RTC of Quezon City, Branch 76, a petition for *mandamus*, docketed as Civil Case No. Q-0759855, to compel the DENR Secretary to continue to hold, seize and confiscate the mineral ores stockpiled at the Palawan pier pending final determination of the rights of petitioner CITINICKEL and private respondent PLATINUM. On February 27, 2007, Branch 76 of the RTC of Quezon City issued a *status*

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***quo* Order. On March 19, 2007, Branch 100 of the RTC of Quezon City, to which Civil Case No. Q007-59855 was subsequently re-raffled, recalled and set aside the February 27, 2007 *status quo* Order. On May 4, 2007, the RTC of Quezon City, Branch 100, rendered a Decision dismissing the petition for *mandamus* for lack of merit.**

Meanwhile, on August 28, 2006, private respondent PLATINUM filed a Motion for Leave to Amend Complaint attaching thereto the Amended Complaint, which impleaded OLYMPIC's Board of Directors and Rockworks Resources Corporation (ROCKWORKS) and the latter's Board of Directors as additional defendants.

Subsequently, private respondent PLATINUM filed an Urgent Motion for Issuance of Expanded Writ of Preliminary Injunction to:

xxx xxx xxx

In another assailed Order dated April 13, 2007, the RTC granted PLATINUM's application for the issuance of an expanded writ of preliminary injunction.[4] [Emphasis supplied]

G.R. No. 178188
Olympic Mines and Development Corporation v. Platinum Group Metals Corporation

Olympic questions the Decision[5] dated February 28, 2007 and Resolution[6] dated May 30, 2007, of the Court of Appeals in **CA-G.R. SP No. 97259**. The assailed Decision affirmed the Orders dated October 4 and 5, 2006, of the RTC, Branch 95,

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[4] *Id*. at 892-900.

[5] *Rollo* (G.R. No. 178188), pp. 41-58; Penned by Associate Justice Normandie B. Pizarro with the concurrence of Associate Justices Edgardo P. Cruz and Fernando Lampas Peralta.

The dispositive portion of the Decision states:

WHEREFORE, above premises considered, the instant Petition is **DISMISSED**. The October 4, 2006 and October 5, 2006 ***Order(s)*** of the Regional Trial Court, Br. 95, Puerto Princesa City, Palawan, in Civil Case No. 4199 hereby **STAND**. Costs against Petitioner.

SO ORDERED.

[6] *Id*. at 78-79.

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Puerto Princesa City, Palawan, in **Civil Case No. 4199**. The Order dated October 4, 2006, denied Olympic's motion for reconsideration of the Orders dated July 21[7] and 31,[8] 2006, which respectively granted Platinum's application for a writ of preliminary injunction and approved the bond therefor. The Order[9] dated October 5, 2006, on the other hand, denied

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[7] *Id*. at 258-273.

The dispositive portion of the Order states:

WHEREFORE, premises considered, let a writ of PRELIMINARY INJUNCTION BE ISSUED directing defendant Olympic Mines and Development Corporation, its assignees and successors-in-interest Citinickel Mines and Development Corp., agents, representatives, or persons or entities acting on its behalf or under its authority, control or influence, to CEASE and DESIST from performing any act that will tend to impede, hamper, limit or adversely affect the full enjoyment by plaintiff corporation of its rights under the operating agreement such as and including, but not limited to the following:

1. Making representations of claims with any person, including the proper government agencies, that the operating agreement has already been terminated or is no longer in effect;
2. Making representations or claims with any person, including the proper government agencies, that plaintiff has violated any of defendant's rights under the operating agreement; and
3. Interfering with the possession, control and/or operation of the Pulot Nickel Mine and the Toronto Nickel Mine;
4. Performing any act which will disturb the status quo.
5. In view of the several complaints and petitions already filed by defendant and dismissed at its own instance, from filing further complaints/ petitions on the basis of the alleged termination of the operating agreement.

Considering that the complaint filed by the assignee of defendant corporation, Citinickel Mines and Development Corporation also contains a prayer for the issuance of a writ of preliminary injunction against herein plaintiff-corporation, in the interest of good order and conflicting resolutions, let a copy of the writ of Preliminary Injunction be furnished the RTC of Parañaque City for its reference.

The plaintiff shall immediately post a bond of Two Million Pesos (₱2,000,000.00) in favor of defendant corporation should the latter incur any loss or damage relative to the enforcement of above writ.

SO ORDERED. (*Id*. at 271-273).

[8] *Id*. at 274.

[9] *Id*. at 285-286.

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Olympic's motion for reconsideration of the Order[10] dated August 15, 2006, denying Olympic's motion to dismiss and motion to suspend proceedings.

In the assailed Decision dated February 28, 2007, the Court of Appeals ruled that the trial court properly exercised jurisdiction over the complaint (for quieting of title/interest and removal of cloud, breach of contract and damages, and specific performance) in Civil Case No. 4199, because the main issue raised therein was whether Platinum had a claim and/or right over the subject mining areas pursuant to the parties' Operating Agreement. The resolution of this issue, according to the appellate court, does not require the technical expertise of the DENR's Panel of Arbitrators (POA).

The Court of Appeals also declared that the venue was properly laid in the RTC of Palawan where the disputed mining areas are situated because actions affecting title to or possession of real property or the assertion of any interest therein should be commenced and tried in the court that has jurisdiction over the area where the real property involved or a portion thereof is situated. The appellate court further found that there was no grave abuse of discretion attendant in the issuance of a writ of preliminary injunction in favor of Platinum.

Reconsideration was denied in the Resolution dated May 30, 2007 for lack of merit.

In its Petition for Review[11] dated June 20, 2007, Olympic asserts that it is the POA which has jurisdiction over the complaint (for quieting of title) filed by Platinum because the case involves a mining dispute requiring the technical expertise of the POA. The case, which involves the existence of the grounds for the cancellation of the Operating Agreement, among which are over-extraction of mineral ores and failure to install adequate pollution control measures, is allegedly within the exclusive cognizance of the POA under Republic Act No. 7942. Moreover, Olympic

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[10] *Id*. at 275-278.

[11] *Id*. at 3-39.

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asserts that the complaint is a personal action seeking, as it does, the court's declaration that Platinum did not violate the Operating Agreement and is entitled to the enforcement thereof. As a personal action, the complaint should have been filed with the court of the place where the plaintiff or defendant resides at the election of the plaintiff, and not the court where the property is situated.

Considering the foregoing, preliminary injunction as an ancillary remedy should not have been granted. More so, because there exists a clear challenge, in the form of Olympic's cancellation of the Operating Agreement, to the right asserted by Platinum.

Olympic objects to the tenor of the injunction particularly as it directs the parties to cease and desist from making representations or claims and from filing complaints or petitions in connection with the termination of the Operating Agreement because the injunction allegedly effectively stifles Olympic's right to free expression and from pursuing appropriate legal remedies to vindicate its claims.

Platinum filed a Comment[12] dated October 1, 2007, asserting that its complaint involves title to and possession of real property within the jurisdiction of the RTC. Platinum points out that Olympic had itself invoked the jurisdiction of the trial court as it filed two complaints first with the RTC of Puerto Princesa City, Branch 52, and second, with the RTC of Parañaque City. Both complaints were grounded on Platinum's alleged violations of the Operating Agreement and sought to enjoin it from conducting mining operations on the disputed areas, effectively ousting Platinum from its possession thereof. The complaint also seeks a determination of the validity of the Operating Agreement, a decidedly judicial function.

The main objective of the complaint is to retain possession of the disputed mining areas. It is thus a real action and venue was properly laid in the RTC of Palawan where the disputed properties are located, Platinum argues.

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[12] *Id.* at 326-381.

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Platinum avers that Olympic cannot challenge the factual basis for the preliminary injunction issued by the trial court in its petition for review before this Court. At any rate, Platinum insists that there was paramount necessity for the injunction because Olympic's acts were causing incalculable harm to its business interests.

Perhaps most importantly, Platinum points out that Olympic and its assignee, Citinickel, are guilty of forum shopping because their complaint dated July 18, 2006 filed with the POA; petition dated July 11, 2006 filed with the Provincial Mining and Regulatory Board (PMRB) of Palawan; complaint dated June 20, 2006 filed with the RTC of Parañaque City; and the EMB letter-complaints all relate to the Operating Agreement, and contain a common prayer for the cancellation of the Operating Agreement and for an injunction to issue against Platinum.

Olympic filed a Reply dated March 7, 2008, reiterating its argument that the trial court has no jurisdiction over Platinum's complaint.

G.R. No. 180674
Citinickel Mines and Development Corporation v. Judge Bienvenido C. Blancaflor and Platinum Group Metals Corporation

Citinickel questions the Decision[13] dated November 20, 2007, of the Court of Appeals in **CA-G.R. SP No. 99422**, which dismissed for lack of merit its petition for *certiorari* assailing the July 21, 2006 and April 13, 2007[14] Orders of the RTC in **Civil Case No. 4199**.

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[13] *Supra* note 1.

[14] *Id.* at 125-142.

The dispositive portion of the Order states:

WHEREFORE, premises considered, this Court GRANTS the issuance of an expanded writ of preliminary injunction as prayed for to wit:

Directing the DENR, Office of the Secretary of the DENR, the Secretary of DENR, as well as the Panel of Arbitrators, Environmental Management Bureau (EMB) and the Mines and Geosciences Bureau (MGB), their agents, representatives or persons entities acting on their behalf or under their authority,

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In dismissing Citinickel's petition, the Court of Appeals held that the October 30, 2006 Resolution of the POA of MGB Region IV-B (POA Resolution),[15] canceling the Operating

control or influence, from interfering in any way with the possession, control and/or operation of the Pulot Nickel Mine and the Toronto Nickel Mine, including the custody, control and disposition of the mineral ores extracted pursuant to the Operating Agreement and stockpiled at the stockyards; and further, from performing any act which will disturb the status quo; and from doing any act — including the implementation/enforcement of the Order dated 27 February 2007 issued by Judge Alexander Balut and the Memorandum dated 27 February 2007 issued by the Secretary of the DENR — that will tend to impede, hamper, limit or adversely affect the full enjoyment by Platinum of its rights under the Operating Agreement.

The plaintiff-movant is directed to increase its bond from ₱2,000,000.00 to ₱2,500,000.00 effective immediately to answer for any damage that may arise as a result of the enforcement of the original writ of preliminary injunction and this new expanded writ of preliminary injunction.

IT IS SO ORDERED. (*Id*. at 142)

[15] *Rollo* (G.R. 181141), pp. 468-477.

The dispositive portion of the Resolution states:

WHEREFORE, premises considered, the complaint, dated July 18, 2006, filed by Olympic Mines and Development Corporation, as represented by Citinickel Mines and Development Corporation, and the earlier Petition, dated June 8, 2006, filed by Olympic Mines and Development Corporation are, as they are hereby given due course.

1. The Operating Agreement, dated July 18, 2003, by and between Olympic Mines and Development Corporation and Platinum Group Metals Corporation is hereby cancelled and declared as without force and effect.
2. The Small Scale Mining Permits SSMP PLW No. 39 and 40, issued under the name of Platinum Group Metals Corporation are, as they are hereby cancelled and withdrawn.
3. In order to prevent respondent, their privies and all other persons working in their behalf from further inflicting wanton damage and prejudice to the environment, it is recommended to the Mines Adjudication Board that an order be issued directing that they cease and desist from operating the mining areas subject of this case.
4. Enjoining the Mines and Geosciences Bureau and the Environmental Management Bureau, of DENR Region IV-B MIMAROPA to conduct an in depth investigation and accounting of the environmental damage brought upon the areas covered for proper assessment.

SO ORDERED.

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Agreement and the SSMPs issued to Platinum, and enjoining the latter to cease and desist from conducting mining operations in the disputed areas violated the writ of preliminary injunction previously issued by the RTC in its Order dated July 21, 2006. The POA Resolution also contravened the Order dated May 16, 2006 of the RTC of Puerto Princesa City, Branch 52, in Civil Case No. 4181, which dismissed Olympic's complaint for injunction against Platinum; the Order dated December 22, 2006 of the RTC of Parañaque City, Branch 258, in Civil Case No. 06-0185, which dismissed Citinickel's complaint for rescission of the Operating Agreement on the ground of forum shopping; and the Decision dated May 4, 2007 of the RTC of Quezon City, Branch 100, in Civil Case No. Q-07-59855, which dismissed for lack of merit Citinickel's petition for *mandamus* (to compel the DENR Secretary to continue to hold, seize and confiscate the mineral ores stockpiled at the Palawan pier pending final determination of the rights of Citinickel and Platinum).

The appellate court also berated Citinickel for trying to circumvent the foregoing RTC Orders by pursuing through administrative means the cancellation of the SSMPs and ECCs issued to Platinum. Thus, it assessed triple costs against Citinickel for blatant forum shopping.

In its Petition[16] dated December 26, 2007, Citinickel asserts that by virtue of the Deed of Assignment dated June 9, 2006, it became an assignee of Olympic before Platinum's complaint was filed on June 14, 2006. Since it was not impleaded as a party to Civil Case No. 4199 notwithstanding its indispensability to the case, it is not bound by the preliminary injunction issued by the trial court. For the same reason, the POA Resolution issued in the case filed by Citinickel cannot be deemed to have contravened the preliminary injunction.

Citinickel argues that the POA Resolution had already attained finality because of the appellate court's dismissal via the Resolution dated January 18, 2007 of Platinum's petition assailing the POA Resolution. In this connection, Citinickel avers that it was the

[16] *Rollo* (G.R. No. 180674), pp. 10-50.

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appellate court's Special Fifth Division in CA-G.R. SP No. 97288 which first acquired jurisdiction to resolve the question of the validity of the POA Resolution. Thus, the Eleventh Division in CA-G.R. SP No. 99422 wielded no authority to declare that the POA Resolution was void.

Further, *res judicata* as a consequence of the cases enumerated by the Court of Appeals in its assailed Decision does not apply because Citinickel was not a party to two of the cases cited. For the same reason, Citinickel claims that it cannot be held to have committed forum shopping.

It allegedly cannot be held to have indirectly circumvented the preliminary injunction issued by the trial court by seeking the cancellation of Platinum's SSMPs and ECCs because the injunction covered only acts which tend to interfere with Platinum's rights under the Operating Agreement.

In a Resolution[17] dated January 16, 2008, the Court issued a temporary restraining order (TRO) enjoining the implementation of the assailed Decision dated November 20, 2007, as well as the enforcement of the injunction Orders dated July 21, 2006 and April 13, 2007 issued in Civil Case No. 4199.

Platinum filed a Comment with Motion for Reconsideration[18] dated January 25, 2008, arguing that it had earlier assailed the validity of the POA Resolution via a petition for *certiorari* dated December 18, 2006 docketed as CA-G.R. SP No. 97288. That case was still pending when Citinickel filed its petition dated June 25, 2007 docketed as CA-G.R. SP No. 99422, founded on the alleged validity of the POA Resolution. Moreover, the Court of Appeals in CA-G.R. SP No. 97259 had earlier affirmed the jurisdiction of the trial court in Civil Case No. 4199 and its authority to issue the preliminary injunction therein. Citinickel's filing of the petition in CA-G.R. SP No. 99422, despite Platinum's previously filed petition for *certiorari* in CA-G.R. SP No. 97288 and the appellate court's Decision and Resolution in CA-G.R. SP No. 97259, was allegedly a clear abuse of judicial process.

[17] *Id*. at 820.

[18] *Id*. at 831-886.

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Since the preliminary injunction and the expanded writ did not enjoin Citinickel from performing any act, Platinum claims that it has no standing to challenge the legal validity of the trial court's Orders. Nonetheless, Platinum claims that the injunction orders are binding on Citinickel. Allegedly, the assignment of Olympic's rights took effect only upon the approval thereof by the Regional Director concerned. This approval was issued by the Regional Director of the MGB Regional Office No. IV-B on September 6, 2006 or after Civil Case No. 4199 was filed on June 14, 2006. Thus, Citinickel is a successor-in-interest by title subsequent to the commencement of the action. It is therefore bound by the injunction orders issued in the case. Platinum further alleges that Citinickel merely stepped into the shoes of Olympic and acted as the latter's agent.

Platinum sought the reconsideration of the TRO issued by the Court.

In its Reply with Opposition[19] dated February 8, 2008, Citinickel insists that its right to due process was violated by the trial court in Civil Case No. 4199 because the effect of the injunction orders was made to encompass Citinickel notwithstanding the fact that it was not a party to the case. The injunction orders, while not specifically directed against Citinickel, have the effect of frustrating the exercise of its rights over the disputed mining areas.

Citinickel claims that the approval of the Regional Director concerned is not a prerequisite to the validity of the Deed of Assignment executed between it and Olympic. At best, such approval is only a requisite for the effectivity of the agreement and does not negate the fact that prior to the filing of Platinum's complaint, Olympic's rights have already been validly ceded to Citinickel.

Citinickel denies that an agency was created as a consequence of the Memorandum of Agreement between Olympic and another mining company, Rockworks Resources Corporation (Rockworks), because the MOA does not confer on either Olympic or Rockworks the right to participate in the management or direct the affairs of Citinickel.

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[19] *Id.* at 1415-1442.

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G.R. No. 181141
Platinum Group Metals Corporation v. Citinickel Mines and Development Corporation

Platinum assails the Resolution[20] dated January 18, 2007 of the Court of Appeals in **CA-G.R. SP No. 97288**, which dismissed outright its petition for *certiorari* questioning the POA Resolution for having failed to file a motion for reconsideration thereof.

The Court of Appeals denied reconsideration in its Resolution[21] dated December 21, 2007.

In its Petition for Review[22] dated February 28, 2008, Platinum defends its non-filing of a motion for reconsideration of the POA Resolution in DENR Case No. 2006-02-B on the ground that such motion would have been denied by the POA as it had already affirmed the cancellation of Platinum's ECCs in DENR Case No. 8253. Further, an appeal with the Mines Adjudication Board (MAB) would also have been useless because the POA had declared that the decision to cancel the SSMPs and the Operating Agreement was not entirely its own but also that of the DENR, which includes the MAB. Platinum claims that its filing of a petition for *certiorari* was necessitated by the patent illegality of the POA Resolution and the fact that Platinum had been denied the opportunity to controvert Citinickel's complaint, its motion to dismiss having been treated as its answer.

Platinum contends that the POA Resolution effectively nullified the injunctive writ previously issued by the trial court in Civil Case No. 4199. The POA also allegedly impinged not only on the jurisdiction of the trial court in Civil Case No. 4199 but also on the jurisdiction of the RTC of Parañaque City before which Citinickel had also filed a complaint grounded on the alleged violation by Platinum of the Operating Agreement.

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[20] G.R. No. 181141, *rollo*, pp. 79-82; Penned by Associate Justice Edgardo F. Sundiam with the concurrence of Associate Justices Mario L. Guariña III and Monina Arevalo-Zenarosa.

[21] *Id.* at 84-87.

[22] *Id.* at 14-78.

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Moreover, Platinum argues that Citinickel is bound by the Resolution dated August 16, 2006 of the PMRB denying for lack of merit Olympic's letter-complaint seeking the revocation of Platinum's SSMPs.

In a Resolution[23] dated July 2, 2008, the Court resolved to consolidate G.R. Nos. 180674 and 181141 with G.R. No. 178188.

In view of the consolidation of these cases, Citinickel filed a Supplemental Petition and Comment[24] (on Platinum's petition in G.R. No. 181141) dated August 11, 2008, reiterating its argument that the injunctive orders in Civil Case No. 4199 were issued without jurisdiction and that its non-inclusion as an indispensable party in the said case warranted the dismissal of the same.

Citinickel asserts that the POA Resolution had already become final and executory by virtue of Platinum's withdrawal of its motion for reconsideration filed with the POA. Further, Citinickel avers that on January 3, 2007, it was granted, as Olympic's assignee, a Mineral Production Sharing Agreement (MPSA) covering the disputed mining area. Thus, after the damage incurred by Platinum has been assessed and determined, Citinickel contends that possession of the disputed mining area should be turned over to it so that it may then proceed with mining operations pursuant to the MPSA.

Platinum filed a Reply[25] dated October 17, 2008, reiterating its arguments.

G.R. No. 183527
Platinum Group Metals Corporation v. Court of Appeals and Polly C. Dy

Platinum seeks to set aside on *certiorari* the Resolution[26] dated March 3, 2008, of the Court of Appeals in **CA-G.R. SP**

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[23] *Id.* at 667-668.

[24] *Id.* at 711-768.

[25] *Id.* at 1425-1456.

[26] *Rollo* (G.R. No. 183527), pp. 37-40; Penned by Associate Justice Amelita G. Tolentino with the concurrence of Associate Justices Lucenito N. Tagle and Agustin S. Dizon.

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No. 101544, which directed the issuance of a writ of preliminary injunction enjoining Hon. Bienvenido C. Blancaflor from conducting further proceedings in Civil Case No. 4199 and from implementing his Orders dated July 21, 2006, October 26, 2006 and April 13, 2007. Platinum also assails the appellate court's Resolution[27] dated May 14, 2008 which denied its motion for reconsideration.

In its Petition for *Certiorari*[28] dated July 18, 2008, Platinum contends that the appellate court should have dismissed the petition for *certiorari* filed by Polly Dy (questioning the injunctive orders issued by the trial court in Civil Case No. 4199 and the Order of the same court dated October 26, 2006, admitting Platinum's amended complaint and allowing Polly Dy to be impleaded as a party-defendant in the case) on the ground of prematurity. According to Platinum, Polly Dy's petition was filed without first seeking the reconsideration of the trial court's Orders.

Platinum argues that none of the questioned Orders of the trial court were directed against Polly Dy; the latter being merely a member of the Board of Directors of Rockworks which, in turn, is a mere stockholder of Citinickel. The Order dated July 21, 2006 is allegedly directed against Olympic and Citinickel, while the Order dated April 13, 2007 is directed against the DENR, the Office of the Secretary of the DENR, the Secretary of the DENR, the POA, the EMB, and the MGB. Not being mentioned in any of the assailed Orders, Polly Dy allegedly has no legal personality to question the same.

Polly Dy filed a Manifestation and Motion[29] dated July 22, 2008, claiming that the Decision dated July 14, 2008 rendered by the Court of Appeals in CA-G.R. No. 101544 has rendered Platinum's petition moot and academic.

Platinum, on the other hand, filed a Counter-Manifestation/ Opposition with Motion for Consolidation and to Cite in

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[27] *Id.* at 42-43.

[28] *Id.* at 3-35.

[29] *Id.* at 298-305.

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Contempt[30] dated August 15, 2008, arguing that the appellate court's Decision dated July 14, 2008 contravened the TRO issued by this Court on January 16, 2008.

In a Resolution[31] dated September 24, 2008, G.R. No. 183527 was consolidated with the previously consolidated cases of G.R. Nos. 178188, 180674 and 181141.

II.

Foremost among the issues that beg the Court's resolution is whether the trial court had jurisdiction over the subject matter of Platinum's complaint in Civil Case No. 4199.

A.

The well-entrenched principle is that the jurisdiction of the court over the subject matter of the action is determined by the material allegations of the complaint and the law, irrespective of whether or not the plaintiff is entitled to recover all or some of the claims or reliefs sought therein.[32]

Platinum's complaint, styled as one for Quieting of Title/Interest and Removal of Cloud, Breach of Contract and Damages, and Specific Performance, alleges:

3. Plaintiff is engaged in mining operations. Defendant holds mining rights/claims over the Toronto Nickel Mine in the Municipality of Narra and the Pulot Nickel Mine in the Municipality of Española (hereinafter, the "subject mining areas") in Palawan.

4. On 18 July 2003, plaintiff, as the SECOND PARTY, and defendant, as the FIRST PARTY, entered into an Operating Agreement. The said Agreement vested plaintiff with, among others, the following rights and interests:

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[30] *Id.* at 322-327.

[31] *Id.* at 349-350.

[32] *Hilado v. Chavez*, G.R. No. 134742, September 22, 2004, 438 SCRA 623, 641.

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2.1. To enter, occupy, possess, explore, develop, utilize and control the mineral properties subject to Section 2, hereof;

2.2. To conduct mining and all subsidiaries, associated and other related operations in the mineral properties at a rate it deems appropriate;

2.3. To mill, beneficiate and process the ores by appropriate methods or process within or outside the area of the mineral properties;

xxx xxx xxx

5. **Section 23 of the Operating Agreement states that it shall be effective for twenty-five (25) years or for the life of the subject mining areas. Under Section 19**[33] **thereof, it may only be [pre]terminated for gross violations of its terms and provisions.**

xxx xxx xxx

9. **On 24 April 2006, plaintiff was shocked when it received a letter of even date from defendant's counsel alleging that plaintiff has committed gross violations of the Operating Agreement, informing plaintiff of its immediate termination and the suspension of the mining operations, and demanding that plaintiff surrender the possession of the subject mining areas.**

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17. **Defendant claims and declares in the letter dated 24 April 2006, the complaint dated 25 April 2006, the letter dated 18 May 2006 and the letter dated 8 June 2006 that it has already terminated the Operating Agreement. As ground for termination as well as purported basis for its complaint and its application for TRO, defendant insidiously alleged that plaintiff committed gross violations of the Operating Agreement.**

18. Defendant's claims and misrepresentations in said letters and complaint have cast a cloud on plaintiff's rights and interests over the subject mining areas. The said letters and complaint unequivocally give the impression that, since the Operating

[33] The relevant section of the Operating Agreement on termination due to gross violation of the terms and conditions thereof is actually contained in Sec. 20 which the complaint quotes in par. 22.

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Agreement has already been terminated, plaintiff no longer possesses any right or interest over the subject mining areas.

xxx xxx xxx

21. **Defendant's actions are clearly in breach of the Operating Agreement. To repeat, the Operating Agreement provides that it may only be [pre]terminated for gross violations of its terms and provisions. As stated above, however, defendant's allegations with respect to plaintiff's violations of the terms and conditions of the Operating Agreement are merely imagined.**

22. In any case, even assuming *in gratia argumenti* that there is factual basis for defendant to terminate the Operating Agreement, defendant's termination thereof is clearly bereft of legal basis and in breach of the Operating Agreement. Section 20 unambiguously provides:

> The FIRST PARTY may terminate this agreement by giving thirty (30) days notice to the SECOND PARTY based on gross violation of the terms and conditions of this agreement.

23. Clearly, the Operating Agreement may only be considered terminated after the lapse of 30 days. In the instant case, defendant served plaintiff the letter dated 24 April 2006 on even date and filed a complaint the following day. The complaint if filed and the TRO it caused to be issued were thus premature and violative of the Operating Agreement.[34]

It would seem, at first glance, that the complaint involves title to, or possession of, real property, or an interest therein, bringing the complaint within the exclusive original jurisdiction of the RTC.[35] A thorough examination of the complaint, however, reveals an underlying question which makes the jurisdiction of the RTC over the complaint not so indubitable.

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[34] *Rollo* (G.R. No. 180674), pp. 210-216.

[35] BATAS PAMBANSA BLG. 129, Sec. 19 (2).

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In its Motion to Dismiss[36] dated June 23, 2006, Olympic promptly objected to the jurisdiction of the trial court, arguing that it is the POA which, under Republic Act No. 7942, otherwise known as the Mining Act of 1995 (Mining Act), has jurisdiction over the case.

Sec. 77 of the Mining Act provides:

> Sec. 77. *Panel of Arbitrators*.— There shall be a panel of arbitrators in the regional office of the Department composed of three (3) members, two (2) of whom must be members of the Philippine Bar in good standing and one a licensed mining engineer or a professional in a related field, and duly designated by the Secretary as recommended by the Mines and Geosciences Bureau Director. Those designated as members of the panel shall serve as such in addition to their work in the Department without receiving any additional compensation. As much as practicable, said members shall come down from the different bureaus of the Department in the region. The presiding officer thereof shall be selected by the drawing of lots. His tenure as presiding officer shall be on a yearly basis. The members of the panel shall perform their duties and obligations in hearing and deciding cases until their designation is withdrawn or revoked by the Secretary. 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 the following:
>
> (**a) Disputes involving rights to mining areas;**
>
> **(b) Disputes involving mineral agreements or permits;**
>
> **(c) Disputes involving surface owners, occupants and claim-holders/concessionaires; and**
>
> (d) Disputes pending before the bureau and the Department at the date of the effectivity of this act. [Emphasis supplied]

In *Gonzales v. Climax Mining Ltd.*,[37] one of the questions brought before the Court was whether the complaint filed by petitioner (for the annulment of several mining contracts) raised a mining dispute over which the POA has jurisdiction, or a judicial question which should properly be brought before the

[36] *Rollo* (G.R. No. 178188), pp. 207-211.

[37] G.R. No. 161957, February 28, 2005, 452 SCRA 607.

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regular courts. Petitioner therein alleged that respondents, conspiring and confederating with one another, misrepresented under the Addendum Contract and the Financial and Technical Assistance Agreement (FTAA) that respondent Climax-Arimco had possessed financial and technical capacity to put the project into commercial production, when in truth it had no such qualification whatsoever to do so. By so doing, respondents had allegedly caused damage not only to petitioner but also to the Republic of the Philippines.

The Court in *Gonzales* distinguished between a mining dispute within the exclusive and original jurisdiction of the POA and a judicial question properly resolved by regular courts. We held:

> 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 jurisdiction is limited only to those mining disputes which raise questions of fact or matters requiring the application of technological knowledge and experience.[38]

Since the main question raised in *Gonzales* was the very validity of the Addendum Contract, the FTAA and subsequent contracts, the Court ruled that the POA was bereft of jurisdiction. It would have been otherwise had the main question been the rights of petitioner or respondents to the mining area pursuant to these contracts.[39]

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[38] *Id.* at 620.

[39] See also *Asaphil Construction and Development Corporation v. Tuason, Jr.*, G.R. No. 134030, April 25, 2006, 488 SCRA 126.

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The majority argues that following our ruling in *Celestial Mining v. Macroasia*,[40] the POA cannot exercise jurisdiction over Citinickel's complaint on the basis on Section 77 (a), the key phrase of the provision being "disputes involving rights to mining areas." We said in *Celestial*:

> [T]he power of the POA to resolve any adverse claim, opposition, or protest relative to mining rights under Section 77 (a) of RA 7942 is confined only to adverse claims, conflicts, and oppositions **relating to applications for the grant of mineral rights**. x x x Clearly, POA's jurisdiction over "disputes involving rights to mining areas" has nothing to do with the cancellation of existing mineral agreements.

The complaint herein did not pertain to "applications for the grant of mineral rights," hence Section 77 (a) need not apply. **Verily though, the POA properly exercised jurisdiction over Citinickel's complaint, on the basis of Section 77 (b), which relates to "disputes involving mineral agreements or permits.**"

It is essential to understand the antecedents of this case. Citinickel's predecessor-in-interest, Olympic Mines Development Corporation (Olympic) was granted by the Secretary of Natural Resources several mining lease contracts, which can be properly classified as "mineral agreements" under Section 3(ab) of the Mining Act. [41] Olympic then entered into an Operating Agreement with Platinum where it granted the latter "the exclusive privilege and right to occupy, explore, develop, utilize, mine, mill beneficiate and undertake other activities which [Platinum] deems necessary to comply with the terms of this Agreement in accordance with applicable laws and regulations within the areas covered by the mining leases as listed . . ."[42] Effectively, Olympic ceded to Platinum the right to implement the mineral agreement between the Government and Olympic.

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[40] G.R. Nos. 169080, 172936, 176226 & 176319, 19 December 2007.

[41] "Mineral Agreement" — refers to a contract between the government and a contractor, involving mineral production-sharing agreement, co-production agreement, or joint-venture agreement.

[42] G.R. No. 181141 *Rollo*, p. 123.

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The majority claims it is erroneous to assert that the execution of the operating agreement resulted in the cession by Olympic in favor of Platinum of the right to implement the mineral agreement because under Section 30 of the Mining Act, assignment or transfer of rights and obligations under any mineral agreement shall be subject to the prior approval of the Secretary.[43] **However, this argument is debunked by Section 112 of the same Mining Act, which guards against the impairment of existing mining rights, providing that all valid and existing mining lease contracts "shall remain valid, shall not be impaired, and shall be recognized by the government.**"

Returning to the complaint filed with the POA, Citinickel alleged the following acts on the part of Platinum:

(1) Platinum engaged in illegal large scale mining, extracting 78,320.48 metric tons of ore in the months of June and July 2005, which is well in excess of the 50,000 metric tons allowed per annum under small scale mining operations. Platinum did not have a permit to engage in operations other than small scale mining.[44]

(2) Platinum entered into unauthorized Memorandum of Agreements with indigenous communities where it represented itself as the owner of the mining area.[45]

(3) Platinum violated Section 69 of the Mining Act which required that every contractor undertake "an environmental protection and enhancement program covering the period of the mineral agreement or permit" Platinum's mining activities were so severe as to cause

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[43] **By making this argument, the majority contradicts its own position since following the supposed nullity of the operating agreement between Olympic and Platinum, Platinum would have no subsisting rights at all which could be asserted, especially in its civil case before the RTC of Palawan.**

[44] *Id.*, at 174-175.

[45] *Id.*, at 175-176.

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> resident farmers to write complaints as to the environmental damage.[46]

It thus emerges that at least two of the key questions raised in the complaint: whether or not Platinum had engaged in illegal large scale mining by extracting more ore than it was allowed under the law, and whether Platinum's mining activity had caused environmental damage, are questions that involve the expertise of the POA, rooted as they are in the determination of scientific facts and technical issues. Notably, among the members of the POA is a mining engineer or a professional in a related field who would be adept at evaluating the technical issues involved. In contrast, a degree in the mining sciences is not a prerequisite to assume a judicial seat, and it would come as an eccentric surprise if there are actually judges out there conversant with the technical aspects of mining. We held in *Gonzales v. Climax Mining* that the POA's jurisdiction "is limited only to those mining disputes which raise questions of fact or matters requiring the application of technological knowledge and experience."[47]

It is at once obvious that the technical expertise of the POA would have been required to determine, for instance, whether Platinum had violated environmental regulations or misdeclared its mine extraction and ore shipment. Contrary to Platinum's allegation that the POA's technical expertise was not required to resolve the issues between the parties, the following excerpts from the POA Resolution evinces that the POA's technical expertise was distinctly critical:

> A small scale mining operation under an SSMP permit is delimited by the use of manual labor and the prohibition in the use of heavy and sophisticated equipments and machineries. The main requirement for the permit, however, is that the production of ore must not exceed 50,000 metric tons per year, a fact that has been openly violated by herein respondent, to the prejudice of the petitioner and of course of the state, that tends to gain from revenues from the same.

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[46] *Id.*, at 177-178.

[47] *Gonzales v. Climax Mining*, G.R. Nos. 161957, 28 February 2005.

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Fraudulent misrepresentation is also evident in the instant case, when Platinum sought to have in its own name a similar application for Mineral Production Sharing Agreement over the areas covered by its Small-Scale Mining Permit. Respondent knows fully well that there is a pending application for MPSA over the same areas by its principal, Olympic Mines and Development Corporation. Such act is not only deplorable, but also an insult to the DENR who will be called upon to act on such application with the conscious knowledge that there is already one pending. Obviously, respondent is not taking the DENR seriously, as can be gleaned from their non appearance and the ignoring of invitations for technical conferences by the EMB and MGB Offices of this Region.

Respondent, Platinum Group Metals Corporation, has not denied the allegation that it violated the terms and conditions of its permit under the Small Scale Mining Permit granted them by the Provincial Mining Regulatory Board with the consent of Olympic Mines and Development Corporation over areas within the MPSA application of the latter. Under its SSMP PLW No. 40, Platinum is only allowed to extract the volume of 50,000 metric tons annually as provided by law. Result of the investigation conducted by both the Environmental Management Bureau and the Mines and Geosciences Bureau of MIMAROPA region reveal that the company has already over extracted ores from within their permit areas. Likewise, the use of heavy machineries in the operations clearly indicates the violation of the terms and conditions of the small scale mining permit issued to respondent. The over extraction of ore did not only prejudice the rights and interest of its principal, Olympic, but also the government due to the non declaration of or withholding of the true volume extracted which should be the basis for the payment of royalties, taxes and others due the government. The other environmental violations which caused degradations in the area could not have been foreseen by the courts in issuing the injunction in favor of Platinum. Such findings of violations of the terms and conditions of the permit and the environmental compliance certificates were the very reasons for the cancellation of and withdrawal of the ECC issued to Olympic Mines and Development Corporation (OMDC) denominated as ECC No. 4B-218-PA-2140-2004 and ECC No. 4B-220-PA-2140-2004, and Beck's issued to Platinum Group Metals Corporation (PGMC) denominated as ECC No. 4B-219-PA-2140-2004 and ECC No. 4B-221-PA-2140-2004, per the Order of the Secretary, dated September 25, 2006.[48]

[48] *Id.,* at 712-713.

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The majority argues that the POA does not have jurisdiction over Citinickel's complaint because it concerns an Operating Agreement, a purely civil contract between two private entities. This view is highly myopic. **It was Platinum which was exercising the rights under the mineral agreements accorded to Olympic**.

The complaint filed with the POA can be accommodated with ease under Section 77(b), which states "disputes involving mineral agreements." The subject dispute involves mineral agreements, since it was under the indispensable authority of the mineral agreements that Platinum had allegedly committed the assailed acts. The violations complained of Platinum are indisputably contrary to the mineral agreements themselves, which Platinum was bound to observe under the terms of the Operating Agreement. The POA certainly has the jurisdiction to prevent further violations on the part of Platinum, and there is nothing in Section 77(b) that would prevent the POA from restraining Platinum's continued abuse of the earth under the authority of the Operating Agreement.

Is there anything in *Celestial* that precludes the POA from exercising jurisdiction over Citinickel's complaint under Section 77(b)? This is what the Court said in *Celestial* concerning Section 77(b):

> On the other hand, Celestial and Blue Ridge contend that POA has jurisdiction over their petitions for the cancellation of Macroasia's lease agreements banking on POA's jurisdiction over "disputes involving mineral agreements or permits" under Sec. 77(b) of RA 7942.
>
> Such position is bereft of merit.
>
> As earlier discussed, the DENR Secretary, by virtue of his powers as administrative head of his department in charge of the management and supervision of the natural resources of the country under the 1987 Administrative Code, RA 7942, and other laws, rules, and regulations, can cancel a mineral agreement for violation of its terms, even without a petition or request filed for its cancellation, provided there is compliance with due process. Since the cancellation of the mineral agreement is approved by the DENR Secretary, then the

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recourse of the contractor is to elevate the matter to the OP pursuant to AO 18, Series of 1987 but not with the POA.

Matched with the legal provisions empowering the DENR Secretary to cancel a mineral agreement is Sec. 77 (b) of RA 7942 which grants POA jurisdiction over disputes involving mineral agreements.

A dispute is defined as "a conflict or controversy; a conflict of claims or rights; an assertion of a right, claim or demand on one side; met by contrary claims or allegations on the other." It is synonymous to a cause of action which is "an act or omission by which a party violates a right of another."

A petition or complaint originating from a dispute can be filed or initiated only by a real party-in-interest. The rules of court define a real party-in-interest as "the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit." Every action, therefore, can only be prosecuted in the name of the real party-in-interest. It has been explained that "a real party-in-interest plaintiff is one who has a legal right, while a real party-in-interest-defendant is one who has a correlative legal obligation whose act or omission violates the legal right of the former."

On the other hand, interest "means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest." It is settled in this jurisdiction that "one having no right or interest to protect cannot invoke the jurisdiction of the court as a party-plaintiff in an action." Real interest is defined as "a present substantial interest, as distinguished from a mere expectancy, or a future, contingent, subordinate or consequential interest."

From the foregoing, a petition for the cancellation of an existing mineral agreement covering an area applied for by an applicant based on the alleged violation of any of the terms thereof, is not a "dispute" involving a mineral agreement under Sec. 77 (b) of RA 7942. It does not pertain to a violation by a party of the right of another. The applicant is not a real party-in-interest as he does not have a material or substantial interest in the mineral agreement but only a prospective or expectant right or interest in the mining area. He has no legal right to such mining claim and hence no dispute can arise between the applicant and the parties to the mineral agreement. The court rules therefore that a petition for cancellation of a mineral agreement anchored on the breach thereof even if filed by an applicant to a

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mining claim, like Celestial and Blue Ridge, falls within the jurisdiction of the DENR Secretary and not POA. Such petition is excluded from the coverage of the POA's jurisdiction over disputes involving mineral agreements under Sec. 77 (b) of RA 7942.

With respect to Section 77 (b), the Court in *Celestial* concluded that the POA had no jurisdiction over a petition for the cancellation of an existing mineral agreement based on the alleged violation of any of the terms thereof. That conclusion aligns with the *ponencia* since the instant cases do not involve the cancellation of the mineral agreements themselves. The Court in *Celestial* also required the existence of a "dispute" for Section 77(b) to apply, pertaining "to a violation by a party of the right to another." Herein, there is clearly a dispute between the rights of Citinickel (as successor-in-interest of Olympic) and Platinum, where the latter's violations have jeopardized the former's highly regulated rights and privileges under a subsisting mineral agreements. Citinickel, as Olympic's successor-in-interest, is a real party-in-interest with a material and substantial interest in the mineral agreements which it had legally taken over. In addition, the determination of the claims involve the terms of the mineral agreements themselves, relating as they do to violations of the law and environmental regulations with which the contractee to a mineral agreement is obliged to comply. Under the framework set forth in *Celestial*, the complaint filed by Citinickel falls within the jurisdiction of the POA under Section 77(b) of the Mining Act.

Significantly, the issue in *Celestial* is who or which between the DENR Secretary and the POA had jurisdiction over the petition for the cancellation of the mining lease agreements entered into by the DENR Secretary with a lessee filed by entities who had no privity at all with the lessee. The role of the courts in the adjudication of the issue was not even brought up.

B.

Given the trial court's lack of jurisdiction over Platinum's complaint in Civil Case No. 4199, it is unnecessary to resolve the question of whether venue was properly laid in the RTC of

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Puerto Princesa City. Nonetheless, it is obligatory to discuss the trial court's injunctive orders.

Citinickel claims that prior to Platinum's filing of its complaint in Civil Case No. 4199 on June 14, 2006, the Deed of Assignment, whereby Olympic assigned to Citinickel all its rights and interests over its mining claims, had already been executed on June 9, 2006. Citinickel became an indispensable party to the suit by virtue of the prior assignment to it of Olympic's mining rights, which included the latter's rights over the disputed areas occupied by Platinum. As an indispensable party without whom no final determination can be had in the case, Citinickel's presence was a *sine qua non* to the trial court's exercise of judicial power.[49]

Platinum avers that upon learning of the execution of the Deed of Assignment, it filed on August 22, 2006 a motion for leave of court to file an amended complaint to implead Polly Dy as an additional defendant. However, it was more than a year later, or on September 4, 2007, that Citinickel itself was impleaded in the suit. Platinum's claim that it only learned of the assignment to Citinickel of Olympic's mining rights at the earliest on August 22, 2006 is itself suspect. Such contention is belied by the questioned Order of July 21, 2006, granting Platinum's prayer for the issuance of a writ of preliminary injunction directed against *both* Olympic and Citinickel.

The majority claims that because Citinickel is the successor-in-interest of Olympic, there exists a privity of interest between them, and thus Citinickel is bound by the injunctive writs issued by the Palawan RTC in the case filed by Platinum against Olympic alone. Given that **the Deed of Assignment was executed by Olympic in favor of Citinickel prior to the institution of Civil Case No. 4199 by Platinum with the Palawan RTC, the majority, with due respect, runs contrary to jurisprudence**.

In *Matuguina v. Court of Appeals*,[50] the Court invalidated a DENR Order of Execution directed against one which was never a party to the assailed proceeding resulting in the issuance of

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[49] *Arcelona v. Court of Appeals*, 345 Phil. 250, 267 (1997).

[50] 263 SCRA 490.

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such Order and, without affording the same an opportunity to be heard before it was adjudged liable. We stated:

> Generally accepted is the principle that no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by judgment rendered by the court. In the same manner an execution can be issued only against a party and not against one who did not have his day in court.[51]

In *Santana-Cruz v. Court of Appeals*, we declared:

> **Owners of property over which reconveyance is asserted are indispensable parties, without whom no relief is available and without whom the court can render no valid judgment.** Section 7, Rule 3 of the Revised Rules of Court provides for the compulsory joinder of indispensable parties without whom no final determination can be had of an action. It is the duty of the plaintiffs (private respondents herein) to implead all the necessary or indispensable parties for the complete determination of the action. **Considering that private respondents knew that the lots, subject of the reconveyance, were already sold to third parties, and yet did not implead them as indispensable defendants in their complaint for reconveyance, private respondents have only themselves to blame. In other words, the judgment ordering the reconveyance of the subject lots is not binding on the third-party vendees who were not impleaded as defendants in the case at bar. A person not included as a party to a case cannot be bound by the decision made by a court.**

In a similar vein, the failure to implead Citinickel even though Olympic had ceded its rights to Citinickel **prior to the filing of Platinum's complaint** necessarily relieves Citinickel from the jurisdiction of the Palawan RTC. At the time of the filing of the complaint, Citinickel was already a real party-in-interest and an indispensable party which should have been impleaded. The cases cited above clearly refute the majority's contentions on those points.

It is unacceptable that the trial court proceeded to include Citinickel in its injunctive order when it had never acquired

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[51] *Id*.

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jurisdiction over Citinickel in the first place. For the same reason, it should be said that the expanded writ of injunction against the DENR, the DENR Secretary, the POA, the EMB, and the MGB, all of whom were never impleaded in the case, should be nullified. Indeed, the complaint should have been dismissed, failing which, all subsequent actions of the court are deemed null and void for want of authority to act, not only as to the absent parties such as Citinickel and the above-mentioned DENR agencies but even as to those present.[52]

III.

The claim of forum-shopping, on which the majority primarily centers, is ultimately a false issue for the purposes of adjudicating these petitions.

The majority is unable to debunk the dissent's key holding — that the POA has exclusive jurisdiction, to the exclusion of regular courts, over the subject dispute involving the conflicting rights of the parties to the mining areas. This conclusion affects Civil Case No. 4199, ostensibly a complaint for quieting of title, filed with the Regional Trial Court (RTC) of Puerto Princesa, Branch 95. Simply put, the RTC of Puerto Princesa has no jurisdiction over Civil Case No. 4199.

What should be the implications of this conclusion to the dispositions of these four petitions?

In G.R. No. 178188, Olympic assails the decision of the Court of Appeals in CA-G.R. SP No. 97259, affirming the orders dated 5 and 6 October 2006 of the Puerto Princesa RTC in Civil Case No. 4199. Since the RTC of Puerto Princesa has no jurisdiction over the case in the first place, the assailed decision of the Court of Appeals obviously warrants reversal.

In G.R. No. 180675, Citinickel assails the decision of the Court of Appeals in CA-G.R. SP No. 99422, affirming another set of orders of the Puerto Princesa RTC in Civil Case No. 4199, these ones dated 21 July 2006 and 13 April 2007. Since the RTC has no jurisdiction over the dispute in the first place, this

[52] *Id*.

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assailed decision of the Court of Appeals again obviously warrants reversal. Moreover, these orders were directed by name against Citinickel, which was not a party to Civil Case No. 4199.

In G.R. No. 183527, Platinum assails a resolution issued by the Court of Appeals in CA-G.R. SP No. 101544, the said resolution directing the issuance of a writ of preliminary injunction enjoining the Puerto Princesa RTC from conducting further proceedings in Civil Case No. 4199. Since the Puerto Princesa RTC has no jurisdiction over Civil Case No. 4199, Platinum's claim that the RTC should be allowed to continue hearing the case should be denied.

The sole petition that did not find genesis in Civil Case No. 4199 is G.R. No. 181141, where Platinum assailed a Court of Appeals Resolution dismissing outright its petition for *certiorari* questioning a POA Resolution for failing to exhaust administrative remedies. Obviously, the key issue therein is whether it was necessary for Platinum to exhaust administrative remedies before filing its petition with the Court of Appeals.

The majority takes advantage of the number of actions involved in this case filed either by Olympic or Citinickel. The facts as presented in the majority opinion can lead one to conclude that forum-shopping had happened at some stage in these cases. Yet there are only two cases that spawned these four petitions — Civil Case No. 4199 which was instituted by Platinum, and the complaint filed by Citinickel with the POA.

Given these premises, how does the question of forum-shopping affect the disposition of these cases? Obviously, the question of forum-shopping becomes relevant only with respect to Civil Case No. 4199 before the Puerto Princesa RTC and the three cases in the Court of Appeals that it spawned, as well as the POA case. Even assuming that there was forum-shopping in the various cases instituted by Olympic or Citinickel in those other cases enumerated in tabular form by the majority opinion, this is not the proper instance to act on such premise, since none of those cases are before us.

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Civil Case No. 4199 was filed by Platinum. No argument is raised that Platinum committed forum-shopping when it filed such case against Olympic.

The Puerto Princesa RTC then issued a set of orders against Olympic, the defendant in Civil Case No. 4199. Did Olympic commit forum-shopping when it filed a petition with the Court of Appeals challenging these RTC Orders? No, for it is the sole remedy that Olympic employed to seek the reversal of the RTC Orders.

Thereafter, the Puerto Princesa RTC issued a set of orders in Civil Case No. 4199 against Citinickel, which was not a party to the said civil case. Did Citinickel commit forum-shopping when it filed a petition with the Court of Appeals challenging these RTC orders against it? Again, how else could Citinickel have assailed these RTC orders, issued by a court which had not acquired jurisdiction over their person? Even though there were pending administrative proceedings relating to the same issue, Citinickel could not have sought the nullification of the RTC orders through those administrative proceedings.

Let us now turn to the POA case, G.R. No. 181141. After the same had been filed by Citinickel, Platinum filed a motion to dismiss, citing among others, forum-shopping. The POA did not resolve the motion to dismiss, but instead promulgated a decision on the merits, granting the complaint of Citinickel and canceling the Operating Agreement. From this decision, Platinum filed a petition for *certiorari* with the Court of Appeals. The Court of Appeals dismissed the petition for *certiorari* on the ground of failure to exhaust administrative remedies, in light of Section 78 of Rep. Act No. 7941 providing that rulings of the POA are appealable to the Mines Adjudication Board (MAB), a point which the majority opinion does not rebut.

On face value, G.R. No. 181141 requires only the application of principles on exhaustion of administrative remedies for its proper resolution. G.R. No. 181141 provides the possible context where ostensibly, the issue of forum-shopping can be made to bear upon by this Court, but in doing so, it would be necessary

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to bypass the Court of Appeals, which had dismissed the petition outright, ignore the POA Resolution, and rule that the POA should have dismissed the case outright on the ground of forum-shopping. By hinging its decision on forum-shopping, the majority has evidently overreached. Even Platinum concedes in its petition that annulling the POA Resolution would "abbreviate the proceedings," rather than allow the resolution of the case in due course.

The matter of forum shopping could be adequately addressed if this case were referred to the Integrated Bar of the Philippines for due investigation. But as demonstrated above, it cannot be determinative of any of these petitions.

IV.

I now turn to a discussion on why the petition in G.R. No. 181141 cannot be indulged. Platinum has only itself to blame for the dismissal of that petition by the Court of Appeals, since it is the MAB and not that court which has appellate jurisdiction over decisions or order of the POA. Sec. 78 of the Mining Act confers such appellate jurisdiction to the POA. Thus:

> SEC. 78. *Appellate Jurisdiction.* — The decision or order of the panel of arbitrators may be appealed by the party not satisfied thereto to the Mines Adjudication Board within fifteen (15) days from receipt thereof which must decide the case within thirty (30) days from submission thereof for decision.

Implementing this provision, Sec. 1, Rule IV of the Rules on Pleading, Practice and Procedure Before the Panel of Arbitrators and the Mines Adjudication Board states that a decision of the POA shall become final and executory 15 days from its receipt by the aggrieved party unless an appeal is duly filed, within the same period, with the MAB. It provides:

> Section 1. Period of Appeal. — **The decision of the Panel of Arbitrators shall become final and executory after the lapse of (15) days from receipt of the notice of decision by the aggrieved party, unless the latter appeals to the Board within the same period.** x x x

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Upon the finality of the decision of the Panel, no appeal having been taken therefrom, the Presiding Officer of the Panel of Arbitrators shall issue a writ of execution directing the Sheriff of the Regional Trial Courts, with jurisdiction overt the area, to implement and execute the writ. [Emphasis supplied]

In obvious disregard of the foregoing rule, Platinum filed on November 20, 2006, a Motion for Reconsideration of the POA Resolution instead of the requisite appeal. However, without waiting for the resolution of its motion and based on its apprehension that its motion will be denied anyway, Platinum withdrew its Motion for Reconsideration and forthwith filed a petition for *certiorari* with the Court of Appeals.

The Court of Appeals, in a Resolution dated January 18, 2007 in CA-G.R. SP No. 97288, dismissed Platinum's petition for failure to first exhaust the available remedies before resorting to the extraordinary remedy of *certiorari*.

It cannot be overemphasized that the extraordinary remedy of *certiorari* will not lie when there are other remedies available to the petitioner.[53] Indeed, Platinum cannot be allowed to forgo procedure simply based on its belief, misguided at that, that filing an appeal with the MAB would have been futile. It was indeed rash for Platinum to suppose that just because the DENR Secretary, who also heads the MAB, issued an Order canceling Platinum's ECC's, he would not give due regard to his duty to review and, if need be, reconsider an Order he had issued.

The foregoing rule is clear enough. The filing of an appeal to the MAB is the only procedural recourse that would have effectively prevented the POA Resolution from attaining finality. Given that Platinum deliberately ignored the remedy laid out in the POA and MAB Rules, the appellate court's dismissal of its petition for *certiorari* was proper. The finality of the POA Resolution followed *ipso facto*.

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[53] *First Corporation v. Court of Appeals*, G.R. No. 171989, July 4, 2007, 526 SCRA 564.

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V.

The dismissal of Platinum's petition for *certiorari* through the Resolution dated January 18, 2007 issued by the appellate court's Special Fifth Division, and the consequent affirmation of the POA Resolution, should have been taken into account by the Eleventh Division when Citinickel invoked its jurisdiction in CA-G.R. SP No. 180674. Had the Eleventh Division prudently stayed its hand, the Court would not have to contend with the two conflicting dispositions of the Court of Appeals, one affirming and the other annulling the POA Resolution.

Nonetheless, the nullity of the injunctive orders issued by the trial court in Civil Case No. 4199, which proceeded from its lack of jurisdiction over the same, together with the finality of the POA Resolution, leave no doubt as to the outcome of this case.

Platinum's right to conduct mining operations in the disputed mining areas proceeds solely from the Operating Agreement, from which also emanates Platinum's privilege to apply for SSMPs and ECCs. It should be noted that Platinum is not a grantee of a mining concession nor was any mining permit issued in its favor by the DENR independent of the Operating Agreement. Moreover, the POA Resolution cancelled and withdrew the SSMPs issued to Platinum. These same SSMPs (SSMP-PLW-039 and SSMP-PLW-040) issued by the Provincial Governor on November 4, 2004 had already expired two years thence, or on November 3, 2006, as provided for under Sec. 13[54] of Republic

[54] Sec. 13. *Terms and Conditions of the Contract.* — A contract shall have a term of two (2) years, renewable subject to verification by the Board for like periods as long as the contractor complies with the provisions set forth in this Act, and confers upon the contractor the right to mine within the contract area: *Provided,* that the holder of a small-scale mining contract shall have the following duties and obligations:

(a) Undertake mining activities only in accordance with a mining plan duly approved by the Board;

(b) Abide by the Mines and Geosciences Bureau and the Small-Scale Mining Safety Rules and Regulations;

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Act No. 7076, otherwise known as the People's Small-Scale Mining Act of 1991. It follows, too, that the ECCs issued by the DENR have become *functus officio*.

In view of the cancellation of the Operating Agreement as decreed by the POA and the cancellation and expiration of the SSMPs issued to Platinum, the latter clearly has no right to possess and occupy the mining areas that now belong to Citinickel by virtue of the Deed of Assignment dated June 9, 2006.

VI.

It is improper for the Court of Appeals to have issued its Resolution dated March 3, 2008 in CA-G.R. SP No. 101544, enjoining Hon. Bienvenido C. Blancaflor from conducting further proceedings in Civil Case No. 4199 and from implementing his Orders dated July 21, 2006, October 26, 2006 and April 13, 2007, in light of the TRO which we issued on January 16, 2008.

Our TRO already enjoined the implementation of the injunction orders dated July 21, 2006 and April 13, 2007 issued by Judge Blancaflor. The Court of Appeals deserves admonition for duplicating our previous order.

In view of the foregoing, I vote to reverse and set aside the Decision dated February 28, 2007 and Resolution dated May 30, 2007 of the Court of Appeals in CA-G.R. SP No. 97259; the Decision dated November 20, 2007 of the Court of Appeals in CA-G.R. SP No. 99422; and the Resolution dated March 3, 2008 of the Court of Appeals in CA-G.R. SP No. 101544.

(c) Comply with his obligations to the holder of an existing mining right;

(d) Pay all taxes, royalties or government production share as are now or may hereafter be provided by law;

(e) Comply with pertinent rules and regulations on environmental protection and conservation, particularly those on tree-cutting, mineral-processing and pollution control;

(f) File under oath at the end of each month a detailed production and financial report to the Board; and

(g) Assume responsibility for the safety of persons working in the mines.

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SEPARATE OPINION

LEONARDO-DE CASTRO, *J.*:

I concur with the disposition of these cases by our esteemed colleague Justice Brion and offer my own opinion on some of the issues raised.

The resolution of these four (4) consolidated petitions hinges upon the issue of jurisdiction over disputes arising from the Operating Agreement between Olympic Mines Development Corporation (Olympic), the recognized applicant for several mining claims, and Platinum Group Metals Corporation (Platinum), the operator of portions of Olympic's mining claims.

A perusal of the Operating Agreement dated July 18, 2003 shows that Olympic, in consideration of royalty payments from Platinum, authorized the latter to operate its mines or conduct mining activities on portions of its mining claims for a period of 25 years. Pursuant to this agreement, both Olympic and Platinum secured and were granted Small-Scale Mining Permits (SSMPs) and Environmental Compliance Certificates (ECCs) over the portions under their respective responsibilities. Notwithstanding the fact Platinum was issued SSMPs and ECCs, the Operating Agreement did not assign to Platinum ownership of any portion of the mining claims and Olympic continued to be the applicant for a Mineral Production Sharing Agreement (MPSA) with the government over all the mining areas involved.

In April 2006, Olympic gave notice to Platinum that the former was terminating the Operating Agreement on the ground of purported gross violations of the terms of said Operating Agreement committed by Platinum. Subsequently, Olympic assigned all its rights and interests in its MSPA application to Citinickel Mining Corporation (Citinickel), a joint venture company that Olympic had formed with Rockworks Resources Corporation (Rockworks).

As noted in the *ponencia*, Olympic and Citinickel individually or jointly pursued several legal actions to secure judicial or administrative confirmation or approval of the termination/

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cancellation of the Operating Agreement with Platinum. One such legal remedy pursued by Olympic and Citinickel was a petition with the Panel of Arbitrators for Region IV-B (MIMAROPA) of the Department of Environment and Natural Resources (DENR). In the petition before the Panel of Arbitrators (POA), it was alleged that Platinum was guilty of "abuse of mining rights" and had violated certain mining laws and regulations. Petitioners therein prayed for the cancellation of the Operating Agreement and the SSMPs of Platinum. The POA issued a resolution (a) declaring the Operating Agreement cancelled and of no force or effect and (b) canceling Platinum's SSMPs. This POA decision was appealed directly to the Court of Appeals (CA) by Platinum but was dismissed for failure to file a motion for reconsideration with the Mines Adjudication Board (MAB). In **G.R. No. 181141**, Platinum prayed that this Court order either (a) the reinstatement of its petition by the CA or (b) the setting aside of the POA resolution without remand to the CA in order to abbreviate the proceedings.

Meanwhile, prior to the filing of the above-mentioned petition with the POA, Platinum filed Civil Case No. 4199 against Olympic with the Regional Trial Court (RTC) of Puerto Princesa City, Palawan, Branch 95 for quieting of title, breach of contract, damages and specific performance.[1] Essentially, Platinum contended that Olympic's termination of the Operating Agreement was invalid and Olympic's contract(s) with Rockworks were in breach of the Operating Agreement and violated Platinum's rights therein. The RTC issued a writ of preliminary injunction, which directed Olympic, its assignees, successors-in-interest, agents and representatives to respect the rights of Platinum under the Operating Agreement. Subsequently, the RTC likewise issued writs enjoining the DENR and its various offices and agencies from, among others, acts that will disturb the *status quo* or impede or affect the full enjoyment of Platinum's rights under the Operating Agreement. These injunctive writs were questioned by Olympic, Citinickel and a certain Polly Dy in separate petitions

[1] Platinum would later amend its complaint to implead Rockworks, its directors and Olympic's directors as additional defendants and to include tortious interference and nullity of contract as additional causes of action.

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filed with the CA. The resolutions of different CA divisions on the matter of validity of the RTC's issuance of injunctive writs are the subject matter of **G.R. Nos. 183527, 178188** and **180674**. Also assailed before this Court in **G.R. No. 178188** is the RTC's denial of Olympic's motion to dismiss, which asserted as a ground, that the RTC had no jurisdiction over the subject matter of the complaint for it is the POA that had jurisdiction over the same.

The jurisdiction of the POA is embodied in the Section 77 of Republic Act No. 7942 (The Philippine Mining Act of 1995), to wit:

> SEC. 77. *Panel of Arbitrators*.––There shall be a panel of arbitrators in the regional office of the Department composed of three (3) members, two (2) of whom must be members of the Philippine Bar in good standing and one [1] licensed mining engineer or a professional in a related field, and duly designated by the Secretary as recommended by the Mines and Geosciences Bureau Director. Those designated as members of the panel shall serve as such in addition to their work in the Department without receiving any additional compensation. As much as practicable, said members shall come from the different bureaus of the Department in the region. The presiding officer thereof shall be selected by the drawing of lots. His tenure as presiding officer shall be on a yearly basis. The members of the panel shall perform their duties and obligations in hearing and deciding cases until their designation is withdrawn or revoked by the Secretary. 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 permits**;
>
> (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. (emphasis supplied)

Both the *ponencia* and the dissent opine that the present controversy does not fall under Section 77(a), under the

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parameters laid down in *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation*.[2] However, they disagree whether the dispute falls under Section 77(b).

On this point, I agree with the *ponencia* that the Operating Agreement does not come within the ambit of Section 77(b) for it is not a "mineral agreement" as defined under RA No. 7942. As defined by statute, a "mineral agreement" is a contract **between the government and a contractor**, involving mineral production-sharing agreement, co-production agreement, or joint-venture agreement.[3] A "mineral production sharing agreement," "co-production agreement" and "joint venture agreement" likewise have technical definitions under the law and suffice it to say, that the Operating Agreement did not fit any of those definitions.

Neither did the Operating Agreement involve an assignment or transfer of rights and obligations under a mineral agreement as contemplated by Section 30 of RA No. 7942.[4]

To begin with, it is unclear if Olympic had a subsisting grant from the government over the subject mining areas at the time the Operating Agreement was executed. What is apparent from the pleadings is that Olympic was previously granted mining lease contracts over the mining areas and that Olympic was also the applicant for an MPSA for the same mining areas.

In any event, whatever rights and obligations Olympic had as the previous grantee of mining concessions or as the recognized applicant for an MPSA over the said mining areas, none of those mining rights and obligations were transferred or assigned to Platinum. Under the Operating Agreement, Olympic was simply

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[2] G.R. Nos. 169080, 172936, 176226, and 176319, December 19, 2007.

[3] Section 3(ab), RA No. 7942.

[4] Section 30 of RA No. 7942 provides:

Section 30. Assignment/Transfer.— Any assignment or transfer of rights and obligations under any mineral agreement except a financial or technical assistance agreement shall be subject to the prior approval of the Secretary. Such assignment or transfer shall be deemed automatically approved if not acted upon by the Secretary within thirty (30) working days from official receipt thereof, unless patently unconstitutional or illegal.

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allowing Platinum to undertake mining activities on Olympic's mining claims or to operate Olympic's mines on the former's behalf. Their relationship under the Operating Agreement is akin to the concept of agency under civil law. Olympic allowed Platinum to do acts within the mining areas that Olympic itself could lawfully do but only for and on Olympic's behalf. In fact, Olympic and Citinickel referred to Platinum as an "agent" in their petition before the POA.

To be sure, it is Olympic's vehement view that the Operating Agreement did not give Platinum a right to apply for an MPSA in its own name. For despite the existence of the Operating Agreement, it was Olympic who was still the grantee of, or the applicant for, mining rights from the government and it was still the one who was principally liable for compliance with the conditions of such grant or the laws governing such an application. Contrasting the Operating Agreement with the Deed of Assignment that Olympic executed in favor of Citinickel, the latter clearly stated that Olympic was transferring all its rights and interest in its MPSA application over the mining areas to Citinickel. Pursuant to this Deed of Assignment, the government eventually issued an MPSA over the mining areas in the name of Citinickel. I believe it is the Deed of Assignment that Olympic executed in favor Citinickel that is akin to the assignment/transfer of rights contemplated by Section 30, not the Operating Agreement.

It is also doubtful that the present controversy is the sort of "dispute" over which the POA has jurisdiction. In *Celestial,* the Court held that a dispute is defined as "a conflict or controversy; a conflict of claims or rights; an assertion of a right, claim or demand on one side; met by contrary claims or allegations on the other." Taking this definition of a "dispute" and interpreting the provisions of DENR AO 96-40, the Court held in *Celestial* that the phrase "disputes involving rights to mining areas" in Section 77(a) refers to any adverse claim, protest, or opposition to an **application** for mineral agreement. Analogous to the reasoning in *Celestial*, to my mind, Section 77(b) should likewise be interpreted as referring to conflicting interests and claims with respect to a **granted** mineral agreement or permit.

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In the cases at bar, there were no conflicting claims or rival interests in a mineral agreement or permit granted by the government. There was only one grantee of, or applicant for, a mineral agreement and that was Olympic (later substituted by Citinickel). Any mining rights that Platinum enjoyed or exercised under the Operating Agreement was in representation of Olympic. It is conceded that Platinum had no mining grant or concession from the government in its own name over the same mining areas. Platinum was issued mining permits, not as a grantee or applicant in its own right, but as Olympic's agent/operator. In other words, there is an identity of interests between Olympic and Platinum. There could be no rival or disputing claims to a granted mineral agreement or permit.

Premises considered, the POA had no jurisdiction to cancel the Operating Agreement nor to declare it of no force and effect. To reiterate, the Operating Agreement is not a mineral agreement. Notwithstanding the technical nature of some of the undertakings in the Operating Agreement and despite the State's interest in ensuring compliance with mining laws by the parties thereto, the Operating Agreement is primarily a civil contract between private persons and the rights and obligations of the parties thereto is properly determined by the civil courts. Platinum's commitment under the Operating Agreement to faithfully comply with mining laws and regulations was only one of the obligations involved in said agreement. The causes of action raised by Platinum in its complaint, such as the alleged (a) invalid termination of the Operating Agreement, (b) bad faith attending the termination, (c) entitlement to damages and specific performance, are well within the jurisdiction of the RTC.

As for the POA's cancellation of the SSMPs of Platinum, I am also of the considered view that the POA had no jurisdiction to issue such an order. The underlying principle in *Celestial* is that it is the approving/granting authority that has the power to cancel or withdraw a mineral agreement or permit on the ground of violation of the terms and conditions of the agreement or permit. SSMPs are not issued by the POA. Under Section 103 of DENR Administrative Order No. 96-40, it is the Provincial Governor/City Mayor, through the Provincial/City Mining

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Regulatory Board, that has the power to approve SSMPs for areas outside mineral reservations. The records show that Platinum's SSMPs were approved by the Provincial Governor, through the proper provincial mining regulatory board. I believe the proposed cancellation of an SSMP for any violation of the terms thereof should be brought before the issuing/approving authority and not the POA.

As for the purported violations by Platinum of the terms and conditions of its ECCs, I likewise believe that the Environmental Management Bureau of the DENR, as the issuing/approving authority, has the jurisdiction to investigate and pass upon the matter. Thus, the parties should exhaust their administrative remedies on the matter of environmental compliance.

As for the injunctive writs issued by the RTC and the CA, I concur with the *ponencia* on the propriety of setting aside the writ of preliminary injunction issued by the CA against the RTC in Civil Case No. 4199 and in affirming the validity of the injunctive writs issued by the RTC for substantially the same reasons stated in the *ponencia*. I qualify my vote, however, with respect to the RTC's injunctive order against the DENR and its offices/ agencies. The RTC's order should be understood as only preventing the said agencies from taking jurisdiction over disputes pertaining to the Operating Agreement. However, the RTC should not enjoin the DENR and its offices, or other executive/ administrative agencies, from exercising their jurisdiction over alleged violations of the terms of Platinum's ECCs or other mining permits. To my mind, breaches of the Operating Agreement and breaches of the terms of Platinum's ECCs or mining permits are different matters. The former belongs to the jurisdiction of the regular courts while the latter belongs to the jurisdiction of the appropriate executive/administrative agencies. Each should respect the jurisdiction of the others.

In conclusion, my vote on each of the petitions involved herein is in line with the *ponencia* subject only to the qualifications stated above.