SECOND DIVISION

G.R. No. 183573 (DIZON COPPER SILVER MINES, INC. v. DR. LUIS D. DIZON)

Promulgated:
JUL 18 2012

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DISSENTING OPINION

CARPIO, *J.*:

The thrust of both the *ponencia* of Justice Perez and the Separate Concurring Opinion of Justice Brion is the lack of authority of Benguet Consolidated, Inc. (BCI) to file the MPSA-P-III-16 application on behalf of Dizon Copper Silver Mines, Inc. (Dizon Copper).

The first point raised is that a corporate officer cannot bind the corporation without authorization from the board of directors. Juvencio D. Dizon, President of Dizon Copper, was allegedly not acting within any express or implied authority from Dizon Copper's board in writing the 14 June 1991 letter to BCI giving authority to BCI to file the MPSA-P-III-16 application. Further, there was allegedly no ratification on the part of Dizon Copper to Juvencio's act of giving such authority to BCI.

Generally, in the absence of authority from the board of directors, no person can validly bind a corporation, not even its corporate officers.[1] However, the board of directors may validly delegate some of its functions and powers to its officers, committees, or agents.[2] The authority of the officers, committees, or agents to bind the corporation can be derived from law, the corporate by-laws, **or from authorization from the board,**

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[1] *People's Aircargo and Warehousing Co., Inc. v. CA*, 357 Phil. 850 (1998).
[2] Id.

expressly or *impliedly by habit, custom or acquiescence in the general course of business*.[3] This Court has ruled:

> x x x [R]atification can be made by the corporate board either expressly or impliedly. **Implied ratification may take various forms – like silence or acquiescence**; by acts showing approval or adoption of the contract; or by acceptance and retention of benefits flowing therefrom.[4] (Emphasis supplied)

From the time Juvencio issued the authorization letter on 14 June 1991 to the present, **or over a period of more than 20 years**, Dizon Copper never questioned Juvencio's authority to write the 14 June 1991 letter to BCI authorizing BCI to file the MPSA-P-III-16 application. Justice Perez points out that "when there exists other facts that clearly deny or contradict any such intent on the part of the principal – implied ratification cannot be inferred from such *mere* silence."

The fact is, there was **no mere silence** by Dizon Copper. In its Memorandum dated 22 April 2009, Dizon Copper stated that "[o]n 04 July 1991, Benguet filed, **in behalf of Petitioner DCSMI** and other claim owners, a[n] MPSA application, known as "MPSA-P-III-16," over existing mining claims with a total area of 8,576 hectares, inclusive of Petitioner DCSMI's 57 existing mining claims covering 513 hectares."[5] Thus, **Dizon Copper *expressly acknowledged* in its Memorandum that BCI was acting on its behalf in filing the MPSA-P-III-16 application.** Dizon Copper never questioned the authorization given by Juvencio to BCI file the application on Dizon Copper's behalf. More importantly, the statement in Dizon Copper's Memorandum showed its **approval of Juvencio's act** as well as its acceptance and retention of the benefits flowing from such act.

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3 Id.
4 *MWSS v. CA*, 357 Phil. 966, 985-986 (1998).
5 *Rollo*, pp. 688-689.

In short, no one can say that Juvencio was not acting within any express or implied authority because Dizon Copper never questioned Juvencio's authority to issue the authorization letter to BCI, and in fact Dizon Copper **expressly acknowledged** that BCI was acting on Dizon Copper's behalf in filing the MPSA-P-III-16 application.

More importantly, it would be self-defeating and self-destructive for Dizon Copper to disown Juvencio's 14 June 1991 letter to BCI for it would mean the loss of Dizon Copper's valuable preferential right to a mineral agreement with the government. In fact, any act of Dizon Copper's board disowning Juvencio's letter to BCI would be contrary to the best interest of Dizon Copper, and would subject the board to suit for damages by stockholders of Dizon Copper. Juvencio's act in giving authority to BCI was both **necessary and appropriate** to preserve a valuable preferential right of Dizon Copper, as well as to continue the core business of Dizon Copper. Such act bears the **implied authority of the board** of Dizon Copper, in accordance with well-settled jurisprudence, thus:

> Corporate officers, in their case, may act on such matters as may be authorized either expressly by the By-laws or Board Resolutions or impliedly such as by general practice or policy or as are implied by express powers. When officers are allowed to act in certain particular cases, their acts conformably therewith can bind the company. **Hence, a corporate officer entrusted with general management and control of the business has the implied authority to act or contract for the corporation which may be *necessary or appropriate* to conduct the ordinary business**. x x x[6] (Boldfacing and italicization supplied)

Justice Perez states that the Operating Agreement prohibited BCI from entering into any major contract. In this case, BCI filed the MPSA-P-III-16 application in order to continue its operations under the Operating Agreement and it acted on behalf of Dizon Copper upon authority from Juvencio. Justice Perez further states that the doctrine of apparent authority has no application because BCI cannot be considered an innocent party who

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[6] *Rural Bank of Milaor (Camarines Sur) v. Ocfemia*, 381 Phil. 911, 929 (2000).

has no knowledge of Juvencio's lack of authority to bind the corporation. Again, Juvencio's supposed lack of authority is negated by the fact that Dizon Copper **expressly acknowledged** in its Memorandum that BCI was acting in its behalf in filing the MPSA-P-III-16 application. Besides, Juvencio's act in giving BCI the authority is both **necessary and appropriate** to protect and continue Dizon Copper's main business.

The second point raised, this time by Justice Brion, is that the authorization from Celestino and his heirs with respect to the six minings claims covered by the MLCs, is irrevelant. Justice Brion states:

> x x x. These MLCs were to expire on January 31, 2005. Section 19 of RA No. 7942, however, prohibits mineral agreement applications involving areas that are covered by valid and existing mining rights. Section 112 of RA No. 7942 specifically provides that "[a]ll valid and existing mining lease contracts x x x at the date of effectivity of [the] Act, shall remain valid, shall not be impaired, and shall be recognized by the Government[.]" Hence, under the law, **any application *filed by any entity* involving areas covered by the MLCs filed on or before January 31, 2005 is premature and should be denied.** Dizon Mines' MPSA-P-III-16 and MPSA-P-III-03-05 were filed on December 16, 2004 and January 31, 2005, respectively; as both applications were filed before the opening of the period for application, the dismissal of the applications with respect to the areas covered by the MLCs is thus proper.[7]

The rule that no application for mineral agreements may be filed involving areas covered by existing MLCs applies to ***third persons*** other than the holder of the MLCs. This is precisely to protect the preferential right of existing holders of MLCs before opening the application to the public or third parties.

In his *ponencia*, Justice Perez stated:

> Per x x x DENR M.O. No. 97-07, holders of existing mining claims or lease/quarry applications have only until **the 15th of September 1997 to file an appropriate mineral agreement application** in the exercise of their *"preferential rights to enter into mineral agreements with the government"* involving their claims. DENR M.O. No. 97-07 also

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[7] Separate Concurring Opinion, Brion, *J.*, pp. 3-4. Emphasis in the original, citations omitted.

> provides that **failure of the said holders to exercise such preferential right is deemed an abandonment of their existing mining claims or applications.**
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> In the instant case, MPSA-P-III-16 was the *only* MPSA application that was filed before the mandatory deadline. Aside from it, petitioner filed no other *valid* MPSA application covering its mining claims before 15 September 1997.
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> Given the foregoing, it becomes clear that a finding of invalidity of MPSA-P-III-16 has a profound effect on petitioner's rights as to the **51 mining claims not covered by MLCs:**
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> *First:* The validity of MPSA-P-III-16 necessarily meant that **petitioner was not able to validly exercise its preferential rights under Section 113 of R.A. 7924.** As a result, **petitioner is already deemed to have abandoned its mining claims as of 15 September 1997.**
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> *Second:* The assignment of MPSA-P-III-16 in favor of petitioner has also been rendered of no consequence. Such assignment was made by Benguet, and then approved by the DENR, only in 2004-which is well beyond the 15 September 1997 deadline. At that time, petitioner has already lost any legal vested interest it has in the subject mining claims.
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> *Third:* Petitioner's MPSA-III-03-05, filed on 31 January 2005, is considered as a new application insofar as the subject 51 mining claims are concerned. **Petitioner thereby enjoys no preference regarding the said application's approval.**

The *ponencia* and Justice Brion admit that the holder of MLCs has the preferential right to enter into a mineral agreement with the government involving areas covered by the holder of MLCs. However, the *ponencia* and Justice Brion point out that only BCI filed an MPSA application before the 15 September 1997 deadline and that BCI did not have authority to file the MPSA-P-III-16 application on behalf of Dizon Copper.

Again, it boils down to whether Juvencio had authority to write the 14 June 1991 letter to BCI. BCI's authority to file the MPSA-P-III-16 application on behalf of Dizon Copper has been duly established in this case. As such, BCI's assignment of the MPSA-P-III-16 application to Dizon Copper should be reckoned from the time BCI filed the application before the 15 September 1997 deadline and not from the time of the assignment of

the MPSA-P-III-16 application to Dizon Copper. Dizon Copper did not abandon its valid and existing mining claim because BCI filed the MPSA-P-III-16 application on its behalf, an act necessary and appropriate to continue the main business of Dizon Copper.

Hence, the petition should be granted.

ANTONIO T. CARPIO
Senior Associate Justice