

Legal *finesse*

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FNS SCORES WIN FOR MINING IN ROMBLON

The Regional Trial Court of Romblon, Branch 81 in its Resolution dated January 17, 2013 decided in favor of Sibuyan Nickel Properties Development Corporation and declared as unconstitutional Executive Order No. 001, series of 2011 of the Provincial Governor of Romblon which prohibited the conduct of mining activities within the entire province of Romblon.

FNS, representing Sibuyan, filed a case for declaratory relief questioning the legality of the Executive Order on April 26, 2012. FNS

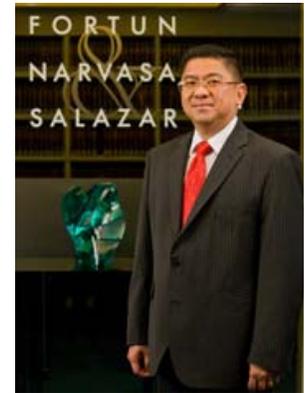
secured the favorable resolution only within a period of nine (9) months from the filing of the petition.

In said Resolution, the RTC of Romblon declared as unconstitutional the Executive Order based on the following grounds: (a) the Constitution does not prohibit mining, thus, any law, executive order or act of government, whether national or local, that prohibits mining is unconstitutional; (b) the Executive Order is an ultra vires act of the Provincial Governor of Romblon as it is not within

his power to enact laws; and (c) the Executive Order is inconsistent with the provisions of the Local Government Code, Philippine Mining Act and Executive Order No. 79.

The issuance of the Resolution is good news for the mining industry as there are several local government units which have taken an anti-mining stance and adopted ordinances prohibiting mining within their locality. FNS has set an excellent precedent against such unconstitutional ordinances on mining. *LF*

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Philippine map source: http://en.wikipedia.org/wiki/File:Ph_locator_map_romblon.png, visited June 5, 2013

Romblon map source: http://en.wikipedia.org/wiki/File:Ph_fil_romblon.png, visited June 5, 2013

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FOUR ABSENCES IN SIX MONTHS NOT SUFFICIENT TO CONSTITUTE GROSS HABITUAL NEGLIGENCE

In *Cavite Apparel, Inc. and Adriano Timoteo vs. Michelle Marquez* (G.R. No. 172044, February 6, 2013) the Philippine Supreme Court recognized management's prerogative to discipline its employees but reminded companies that the exercise of their discretion should at all times be reasonable and should be tempered with compassion and understanding. The Court upheld the complaint of an employee after she was dismissed for being absent from work four times in a period of six months.

Michelle Marquez (Marquez) filed an illegal dismissal case against Cavite Apparel, Inc. (Cavite Apparel). Prior to her dismissal on June 8, 2000, Marquez had three absences without securing any leaves. She was, however, duly sanctioned for these absences.

On May 8, 2000, Marquez got sick and did not report to work. Upon her return, she submitted a medical certificate although Cavite Apparel denied receipt of such. Then Marquez did not report for work on May 15-27, 2000 due to illness. When she reported back for work, she submitted the necessary medical certificates. Cavite Apparel

suspended her for six (6) days and then terminated her employment for habitual absenteeism.

The Supreme Court ruled that Marquez's four (4) absences were not habitual and the "totality of infractions" doctrine is not applicable to the case. The Court found Cavite Apparel liable for illegal dismissal.

The Court said that "[n]eglect of duty, to be a ground for dismissal under Article 282 of the Labor Code, must be both gross and habitual. Gross negligence implies want of care in the performance of one's duties. Habitual neglect imparts repeated failure to perform one's duties for a period of time, depending on the circumstances."

Even assuming that she failed to present a medical certificate for her sick leave on May 8, 2000, the records are bereft of any indication that apart from the four occasions when she did not report for work, Marquez had been cited for any infraction since she started her employment with Cavite Apparel in 1994. Four absences in her six years of service cannot be considered gross and habitual neglect of duty, especially so since the ab-

ences were spread out over a six-month period.

Marquez might have been guilty of violating company rules on leaves of absence and employee discipline, still the penalty of dismissal imposed on her unjustified under the circumstances.

Marquez had been in Cavite Apparel's employ for six years, with no derogatory record other than the four absences without official leave in question, not to mention that she had already been penalized for the first three absences, the most serious penalty being a six-day suspension for her third absence.

The Supreme Court further stated that while it recognizes management's prerogative to discipline its employees, the exercise of this prerogative should at all times be reasonable and should be tempered with compassion and understanding. Dismissal is the ultimate penalty that can be imposed on an employee. Where a penalty less punitive may suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe for what is at stake is not merely the employee's position, but his very livelihood and perhaps the and subsistence of his family. LF©March 4, 2013

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CONDO BUYER’S RIGHT TO NULLIFY MORTGAGE OF PROJECT OWNER LIMITED ONLY TO SPECIFIC INTEREST IN BUILDING, NOT TO ENTIRE SECURED PROPERTY

In *Philippine National Bank, substituted by Tranche 1 (SPV-AMC), Inc. vs. Rina Parayno Lim, et al.*, (G.R. No 171677, January 30, 2013), the Philippine Supreme Court held that a condominium unit buyer has standing to void the mortgage contract entered into between the condominium developer and the bank. The right to nullify the mortgage, however, deals only with her condominium unit and not over the entire condominium project.

Puerto Azul Land, Inc. (PALI) owned and developed Vista de Loro Condominium (Vista de Loro), which extended to eight (8) parcels of land registered in PALI’s name.

PALI secured a loan from Philippine National Bank (PNB) to finance the construction of Vista de Loro. As security, PALI mortgaged to PNB the eight (8) lots.

Subsequently, PALI sold Unit 48C in Cluster Dominiko of Vista de Loro to Rina Parayno Lim. Cluster Dominiko stood in one of the mortgaged lots. PNB’s mortgage was annotated on both Condominium Certificate of Title and Transfer Certificate of Title issued by PALI to Lim.

PALI defaulted on its loan

so PNB foreclosed the mortgage.

Lim filed a case against PALI and PNB to nullify the entire mortgage over all of the eight (8) lots on the ground that the mortgage lacked the approval of the Housing and Land Use Regulatory Board (HLURB), and at the time she learned of the mortgage, she already paid PALI the full purchase price of her unit.

The HLURB ruled in favor of Lim and ordered PNB to return the Condominium Certificate of Title to PALI and for the latter to deliver the title in Lim’s name.

PNB moved for reconsideration and maintained that it is not bound by the contract between PALI and Lim. It also assailed the jurisdiction of the HLURB to annul the entire mortgage contract. PNB thereafter transferred its interest in PALI’s loan and the subject mortgage to Tranche 1 (SPV-AMC), Inc., a special purpose vehicle to handle bad debts.

The Supreme Court upheld HLURB’s authority to annul the mortgage but only to the extent of Lim’s specific interest to her unit and not over the entire eight (8) lots of PALI.

The Court reiterated its In

this case, while she was within her right to file a complaint before the HLURB to protect her right as a condominium unit buyer, Lim had no standing to seek the complete nullification of the mortgage. She had an actionable interest only over her Unit 48C in Cluster Dominiko of Vista de Loro.

The Court declared further that despite the existence of the mortgage, Section 25 of Presidential Decree No. 957 (Regulating the Sale of Subdivision Lots and Condominiums) affords Lim the remedy of redemption. PALI shall be compelled to redeem from PNB the portion of the mortgage corresponding to Lim’s unit within six (6) months from the issuance of Condominium Certificate of Title to Lim. Thereafter, PALI shall deliver to Lim her title over the condominium unit free from all liens and encumbrances. *LF* © February 26, 2013



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In almost two decades of providing legal services to the public, FNS has evolved to become one of the more distinguished and prominent law firms in the Philippines, hurdling legal battles of historical importance with its innovative and ingenious approach to client-problems.

Housed at the 23rd Floor of Multinational Bancorporation Centre at the heart of the Makati Business District, FNS opened its first branch office in Cavite, Philippines in 1999 and a liaison and referral office in Hongkong known as the Fortun Narvasa & Salazar (H.K.) Services Limited in 2002.

With its diversified practice ranging from the prosecution of individual and corporate civil and criminal actions to assisting clients in commercial transactions to providing valued advice in the fast-growing global field of electronic commerce and telecommunications, the Firm provides individualized and cost-effective legal service without compromising the exacting demands of professional excellence and quality.

With FNS, you are assured of quality legal service done through efficient and economically sound processes.

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LEGAL EAGLE: MONICA LEONILA B. SIRON

Joining legal staff of FNS last February 2013 is Monica Leonila B. Siron.

Moi, as she is known to friends, graduated from the Ateneo Law School with a *juris doctor* in 2012. She has extensive experience in legal writing and research having been a senior editor of the Ateneo Law Journal. She wrote a 50-page comment on the case of *League of Cities vs. COMELEC* (G.R. Nos. 176951, 177499, and 178056, April 12, 2011) and examined



the procedural and substantive legal issues and the effects on the integrity of the legal profession and the judiciary brought about by the apparent flip-flopping of the Supreme Court in resolving the case. She based her law school thesis on an in-depth study of the Aurora Pacific Economic Zone and Freeport. During her undergraduate years in the University of the Philippines at Diliman, Moi did research on the significance and feasibility of passing a bill for cheaper medicines for her hometown's congressional representative.

Aside from immersing herself to scholarly writing, Moi held leadership positions in various organizations during her college and law school years. She was President of the leading political science association at UP Diliman. She also headed ALJ's 60th Anniversary Commemorative Exhibit, which displayed the publication's history of excellence.

An art film buff, Moi also enjoys literature, travel and fashion.

Moi is looking forward to the intensive legal training and litigation work with FNS. Her email address is mlbsiron@fnslaw.com.ph. LF