

UNOFFICIAL TRANSLATION

REPUBLIC OF ARMENIA

STAFF OF THE CASSATION COURT

5 V. Sargsyan St.
375010 Yerevan, Tel.: 51-17-67

21.02.2012

Ref. №DD-6-E-992

February 21st 2012

Attention: Armenian Branch of Global Gold Mining LLC
(1/1 Zarobyany St., Yerevan)

Attention: Agency for state registry of legal entities
RA Ministry of Justice
(49/3 Komitas Ave., Yerevan)

Tigran Khurshudyan,
Representative of Marjan Mining Company LLC
(15/14 Chaykovsky St., Yerevan)

Vardan Safaryan,
Representative of Marjan-Caldera Mining LLC
(39 Khanjyan St., Apt. 1, Yerevan)

Please find the decision of the civil and administrative chamber of the RA Cassation Court dated 08.02.2012 over the administrative case, based on the claim of the Armenian Branch of Global Gold Mining LLC against the agency for state registry of legal entities of the RA Ministry of Justice (hereinafter referred to as the Agency), third parties Marjan Mining Company LLC, Marjan-Caldera Mining LLC for annulling the registration of the changes of the sole shareholder of Marjan Mining Company LLC in the register of the shareholders of the company dated 11.08.2010, invalidating the state registration of the changes of the charter of Marjan Mining Company LLC dated 26.08.2010.

Senior assistant to the Judge

G. Sosyan

REPUBLIC OF ARMENIA

CASSATION COURT

Decision of the RA Administrative
Court of Appeals

Administrative Case №VD/3361/05/10

Administrative Case №VD/3361/05/10

Presiding Judge: A.Arakelyan

Judges: H. Bedevyan

G. Gharibyan

DECISION
ON THE RETURN OF THE APPEAL

February 8th 2012

Yerevan

The Civil and Administrative Chamber of the Cassation Court of the Republic of Armenia
(hereinafter referred to as the Cassation Court)

Presided by:

E. Khundkaryan

Attended by:

E. Soghomonyan

V. Abelyan

A. Antonyan

V. Avanesyan

A. Barseghyan

M. Drmeyan

G. Hakobyan

E. Hayriyan

T. Petrosyan

Discussing the issue on accepting for consideration the appeal submitted by the representative of Marjan Mining Company, LLC Tigran Khurshudyan against the decision of the RA Administrative Court of Appeals dated 12.12.2011 based upon the claim of the Armenian Branch of Global Gold Mining LLC (hereinafter, the “Company”) against the agency for state registry of legal entities of the RA Ministry of Justice (hereinafter, the “Agency”), third parties Marjan Mining Company LLC, Marjan-Caldera Mining, LLC for annulling the registration of the changes of the sole shareholder of Marjan Mining Company, LLC in the register of the shareholders of the company dated 11.08.2010, invalidating the

state registration of the changes of the charter of Marjan Mining Company LLC dated 26.08.2010,

FOUND

1. The procedural background of the case

Through its appeal to the Court, the Armenian branch of the Company stated that the special mining license of the Marjan Deposit of RA Syunik Province belongs to Marjan Mining Company, LLC, the 100% of the shares of which is owned by the Company. In 2009, within the framework of making investments for the above mentioned deposit's exploration and further mining, the Company entered into a joint venture agreement with the Canadian Caldera Resources Inc. As a result, on March 24th 2010 in the USA the parties entered into Joint Venture Agreement and established and incorporated the joint venture company called Marjan Mining Company, LLC in the US State of Delaware. On August 11th 2010, the Nork-Marash regional division of the Agency made a change in the register of the shareholders of the company, and registered Marjan Caldera Mining, LLC as the sole shareholder of Marjan Mining Company, LLC, and thereafter, in 26.08.2010 changes in the charter of the company were registered, pursuant to which the 100% ownership of the shares of Marjan Mining Company, LLC is owned by Marjan Caldera Mining, LLC. Through substantiating that the registration of the changes in the register of the shareholders of the company and the changes of the charter of the company by the Nork-Marash Regional Division of the Agency was carried out by violations of the law and such registrations are administrative acts that do not conform to the laws, the Company sought to annul the registration of the changes of the sole shareholder of the Marjan Mining Company, LLC in the register of the company by the Nork-Marash Regional Division of the Agency dated 11.08.2010, as well as the state registration of the changes of the charter of the Marjan Mining Company, LLC dated 26.08.2010.

The claim was satisfied by the decision of the RA Administrative Court (hereinafter, the "Court"), dated 29.07.2011.

Appeals submitted by the representatives of Marjan-Caldera Mining, LLC, Marjan Mining Company, LLC, and Caldera Resources, Inc. were rejected by the decision of the RA Administrative Court of Appeals (hereinafter, the "Court of Appeals") dated 12.12.2011, and the decision of the Court dated 29.07.2011 was upheld.

The representative of Marjan Mining Company, LLC submitted a cassation appeal over this case.

2. Basis, grounds and claims under the appeal

The cassation appeal claims violations of substantive and procedural rights.

The appeal claims that the Court of Appeals violated the Article 19 of the RA Constitution; Article 6 of the European Convention on the Human Rights and Fundamental Freedoms; the Article 1 of the First Protocol; Section 1 of Article 3; Article 12; Paragraph 1 of Section 1 of Article 15; Article 21; Section 1 of Article 24; Article 76; Paragraphs 1, 2 of Section 1 of Article 78; Section 2 of Article 113 of the RA Administrative Procedure Code, it also claims that the Court failed to apply the second paragraph of Clause 6 of Article 321; the Article 1282 of the RA Civil Code; the articles 5, 6, 7 of the RA Law on the Fundamentals of Administrative Action and Administrative Proceedings, that the Court misinterpreted the Paragraph 1 of the Clause 2 of the Article 321; the Clause 1 of the Article 1281 of the RA Civil Code; the Section 2 of Article 12 of the RA Law on State Registration of Legal Entities; the Clause 3 of Article 16 of the same law.

The appellant seeks an acceptance of the appeal for consideration based on the following arguments:

There are apparent violations of substantive and procedural rights, in addition, the decision of the Cassation Court concerning the issue contained in the appeal, may be of a considerable importance for the uniform application of the law.

The appellant sought the above issues based on the following arguments:

The Court of Appeals disregarded the fact that the 100% shares of Marjan Mining Company, LLC registered in the Republic of Armenia were transferred to Marjan Caldera Mining, LLC pursuant to the agreement signed in 24.03.2010. Therefore, the right arising from the agreement is subject to registration in the Republic of Armenia, and therefore, the Republic of Armenia law shall be applied on the agreement, since the choice of law is directly arising from the agreement, while the administrative body carrying out the registration does not have an obligation or right to interpret the documents based on the foreign law as provided in such documents.

The Court of Appeals, while examining the lawfulness of the actions by the Agency, should have taken into consideration whether the above mentioned agreement complied with the Republic of Armenia law and whether or not it contained provisions of transfer of the shares. In this case, the agreement that was registered by the Nork-Marash Regional Division of the Agency, was consistent with the Republic of Armenia laws in the part of the clauses on transfer of the shares, and thus, the agency had no basis to reject its registration.

In addition, the Court of Appeals failed to take into consideration the fact that the Court admitted the power of attorney sent by facsimile, which means it was issued in the country of residence of the person signing it, specifically, for carrying out operations on behalf of the company incorporated in the US State of Delaware. Therefore, its form and the effective date are defined by the legislation of that state. The Court failed to apply the Article

1282 of the RA Civil Code, since, first of all the Court must find out whether or not the form of issuing the power of attorney meets the requirements of legislation of the US State of Delaware. The Court also misinterpreted the Paragraph 1 of the Clause 6 of Article 321 of the RA Civil Code and did not apply the second paragraph of the same clause, since in this article the Court confused the word “delivery” with the word “sending”. Apparently, using the word “delivery” in the above article, the legislator meant the word “to deliver” with the logic of the RA Law on Post Communication.

The Court of Appeals failed to properly examine the joint venture agreement signed in 24.03.2010, which is a very important evidence for resolution of this case and other documents directly associated with that agreement, as a result, the rights of the owner of Marjan Mining Company, LLC guaranteed by the RA Constitution were violated, since the decision of the Court made it impossible to fulfil the rights of the entity obtaining the share ownership under the agreement.

The Court of Appeals, in addition, failed to discuss the argument that in this case the entity submitting the claim failed to prove the violation of its rights and failed to prove that it is an interested party, since at the time of submission of the claim the Company's right of ownership of the shares of Marjan Mining Company, LLC were terminated under the agreement. At the same time, during the investigation of the case there were arguments submitted stating that the person submitting the claim had no power to act on behalf of the Company, and also that the Armenian Branch of the Company was not a legal entity and could not act as a plaintiff.

The Court of Appeals also disregarded the fact that the Court violated the Section 2 of Article 113 of the RA Administrative Procedure Code, since it commenced to investigate the case on a formal basis.

The appellant asked to reverse the decision of the Court of Appeals dated 12.12.2011 and send the case for a new investigation.

3. The reasons and conclusion of the Cassation Court

Considering the arguments of the appellant on accepting the appeal for consideration, the Cassation Court finds that the appeal is subject to be returned based on the following reasons:

Pursuant to Paragraph 7 of Section 1 of Article 118.7 of the RA Administrative Procedure Code, the appeal shall be returned in case basis stipulated by section 1 of Article 118.8 is not satisfied.

Pursuant to Paragraphs 1 and 3 of Section 1 of Article 118.8 of the RA Administrative Procedure Code, the Cassation Court shall accept the appeal for consideration in case the decision of the Cassation Court concerning the issue provided in the appeal is of a considerable importance for a uniform application of the law, and in case there is an apparent violation of substantive or procedural rights.

The Cassation Court finds that the arguments provided by the appellant regarding the presence of significant violations of the standards of substantive and procedural rights were refuted through the decision of the Court of Appeals, based on the following reasons:

While reviewing the Court decision pursuant to Article 117.12 of the RA Administrative Procedure Code based on the arguments contained in the appeal, and substantiating through the decision that “as a violation of the standards of the substantive rights, the appellant pointed out that the Court misinterpreted the Section 2 of Article 12 and Section 2 of Article 16 of the RA Law on State Registration of Legal Entities, and concluded that the agency making the state registration was not entitled to interpret the submitted documents according to the foreign law provided in such documents”, and referring to the Clause 2 of Article 1277 and clause 1 of Article 1281 of the RA Civil Code; Section 2 of Article 12 of the RA Law on State Registration of Legal Entities, as well as the Chapter 18 of the Joint Venture Agreement signed in 24.03.2010, the Court found that “the statement made by the appellant pursuant to application of the clauses 1, 2 and 5 of the Article 1284 of the RA Civil Code, in case the right arising from the agreement is subject to registration in the Republic of Armenia, then the legislation of the Republic of Armenia shall be applied to that part of the agreement, is groundless”.

Under such circumstances the Court of Appeals considered that the legal position of the Court on its statement that “while interpreting the agreement submitted for the registration of the share ownership by the Nork-Marash Regional Division of the Agency as a mixed agreement for the purposes of the transfer of shares, as well as interpreting it as a main or a preliminary agreement, it should have been interpreted by the laws of the US State of New York, whereas, in this case, while considering the joint venture agreement signed between the Company and Caldera Resources Inc. in 24.03.2010 as a basis for the transfer of the shares of Marjan Mining Company, LLC the Nork-Marash Regional Division of the Agency applied the Republic of Armenia law, regarding it as a mixed agreement provided under the Clause 3 of Article 437 of the RA Civil Code, in addition finding that it also contains clauses of share transfer” was well founded.

With regard to the argument of the appellant that “the Court has applied only the first sentence of the Clause 1 of Article 1281 of the RA Civil Code and did not apply the first clause as a whole”, the Court of Appeals found that “the application of the second sentence of the Clause 1 of Article 1281 of the RA Civil Code cannot be of any significance for the resolution of this dispute, since it concerns the invalidity of the transaction, while the issue of the lawfulness of the state registration, and not the agreement, is the issue of this dispute”.

Stating the fact that “the appellant finds that the Court failed to apply the Article 1282 of the RA Civil Code, it has misinterpreted Paragraph 1 of the Clause 6 of Article 321 of the RA Civil Code, as well as it failed to apply the Articles 5, 6 and 7 of the RA Law on Fundamentals of Administrative Action and Administrative Proceedings” the Court of Appeals stated that the Court made conclusions on due form of the power of attorney and its application by the Nork-Marash Regional Division of the Agency on such basis, and not concerning the invalidity of the power of attorney, and as a result it considered lawful the conclusion of the Court that the application for making the state registration of the shares of Marjan Mining Company, LLC under the name of Marjan-Caldera Mining, LLC was submitted by a person not having such authority”.

Also, while reasoning that “the appellant found that the Armenian Branch of the Company could not act as a plaintiff”, and stating that “in accordance with the clauses 3.1 and 3.1.6 of the Charter of the Armenia Branch of the Company, the representative office is entitled to be engaged in any activities of the company, including without any limitation... to represent the company before the Armenian courts and... other agencies solving disputes, to conduct cases aimed at adoption and recognition, implementation and recognition of judicial decisions...” the Court of Appeals considered grounded the conclusion of the Court that “the Company is an interested party over this case, and the Armenian Branch of the Company acted in the administrative proceedings on behalf of the Company”, and “the power of attorney issued by the manager of the Company in 11.12.2010 in the name of the Armenian Regional Director of the Company for representing interests of the Company before the Republic of Armenia Courts was presented, in addition, the letter to the judge was also presented, which testify the availability of such powers”.

The Court of Appeals also considered groundless the statement of the appellant regarding the violation of the Section 2 of Article 113 of the RA Administrative Procedure Code, since “the decision on the necessity of an additional investigation or clarification of the significance of the evidences in the case is the exclusive right and authority of the court”.

The Cassation Court affirms that the RA Cassation Court substantiated its decision dated 17.06.2008 over the case of Meltex LLC and Mesrop Movsisyan vs. Armenia (complaint №32283/04) regarding the European Court of Human Rights expressing a legal position that “the jurisdiction of the court was only to examine the issues of the law (right). In similar cases one cannot state that the Cassation Court failed to mention the lawfulness of the case since it had approved the conclusions of a lower court and included such conclusions in its decisions”.

The Cassation Court also finds that the appellant failed to substantiate the circumstance of the considerable importance of the Cassation Court’s decision for a uniform application of the law.

Under such circumstances the basis for accepting the appeal for consideration provided by the appellant concerning the occurrence of apparent violations of substantive and procedural rights and the argument that Cassation Court's decision is of considerable importance for the uniform application of the law, are groundless, since there is no apparent violation of the substantive or procedural rights in this case.

The Cassation Court finds that the appeal does not meet the requirements of Section 1 of Article 118.8 of the RA Administrative Procedure Code.

Therefore, in accordance with Paragraph 7 of Part 1 of Article 118.7 of the RA Administrative Procedure Code, the appeal is subject to be returned.

Taking into consideration the above stated grounds and pursuant to Article 118.7 and Article 118.8 of the RA Administrative Procedure Code, the Cassation Court

DECIDED

1. To return the appeal submitted by the representative of Caldera Resources Inc. against the decision of the RA Administrative Court of Appeals dated 12.12.2011 over the case № VD/3361/05/10.
2. The decision becomes effective as per the moment of its issuance and is not subject to be appealed.

Chairman

E. Khundkaryan

Judges

E. Soghomonyan
V. Abelyan
A. Antonyan
V. Avanesyan
A. Barseghyan
M. Drmeyan
G. Hakobyan
E. Hayriyan
T. Petrosyan