



# Philippine Resources

Mining, Petroleum & Energy Journal

Issue 2, 2016

CTP invites Philippine  
Resources Journal to Surigao  
del Sur Mine

Ridsdel remembered  
by friends and  
co-workers

Investment  
opportunities in an  
impending water crisis

No Remedy for a  
cancelled FTAA?



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## Ridsdel remembered by friends and co-workers in Philippines

By Jimbo Gulle

**A small gathering of friends and co-workers converged at the Manila Golf and Country Club on May 2 to honor and remember John Ridsdel, the former mining executive who was beheaded by the terrorist Abu Sayyaf Group, seven months after abducting him and three others off Samal Island in Mindanao.**

Ridsdel "was a welcome figure in the mining industry and had many remarkable achievements, both in and out of mining," according to the Chamber of Mines of the Philippines (COMP), which organized the memorial for those who knew and worked with the Canadian in the country.

Ridsdel, who died at age 68, has lived or worked in the Philippines since at least 1986, when he was still working in the oil industry. He made Puerto Galera, the resort town on the island of Mindoro just south of Manila, his home -- owing to his love of sailing and the sea.

"We'll recount stories and share our many experiences of how John has touched our lives and those he worked with," added the Chamber, which joined the public in condemning the execution of Ridsdel last April 25, days after a deadline the Abu Sayyaf set for ransom payments for its four hostages elapsed.

Ridsdel represented Canadian miner TVI -- which has mine sites in the Zamboanga peninsula (Canatuan and Balabag) and Agusan del Norte (Agata), both in Mindanao -- in COMP meetings. He was a senior adviser of the lobby group's communications team, being a former journalist himself.

Ridsdel's family released a statement after the news of his death: "Our family is devastated at the loss of our father and brother John Ridsdel whose life was tragically cut short by this senseless act

of violence despite us doing everything within our power to bring him home," they said. "He was loved by all his friends and adored by his daughters, sister, and extended family. He will be sorely missed in the days to come."

Ridsdel, fellow Canadian Robert Hall, Norway's Kjartan Sekkingstad and Filipina Marithes "Tess" Flor were captured by the ASG on September 21 as Ridsdel docked his new yacht on Samal Island while on vacation. He had sailed down from his home on Puerto Galera in Mindoro island in Luzon on his yacht Azizah de Niamkoko with Hall, according to reports.

Canadian Prime Minister Justin Trudeau called Ridsdel's execution "an act of cold-blooded murder" and said "responsibility rests squarely with the terrorist group who took him hostage." Philippine President Benigno Aquino III vowed to devote all his energy before he leaves office in two months to eliminating the Abu Sayyaf militants.

According to Reuters, the kidnapers initially demanded that military operations against them be stopped immediately. Ridsdel had appeared in a video last March, a knife brandished next to him, saying: "Please stop all of these operations so that negotiations can start about their demands."

The Canadian government has a policy of not paying ransoms, "which means that it's only the families that can possibly play a role in dealing with the ransom demand," says Bob Rae, a longtime friend of Ridsdel who was helping the family behind the scenes, according to a report on PRI.org.

Rae described Ridsdel, whom he's known since college, as full of energy and integrity. "John conducted himself in the most difficult of circumstances with a huge amount of integrity and a great deal of love for his family and for his friends ... [which] makes this ending all the more tragic."

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## No remedy for a cancelled FTAA?

By Patricia A. O. Bunye

**T**he decision of the Supreme Court of the Philippines in *Narra Nickel Mining and Development Corporation v. Redmont Consolidated Mines Corporation* [G.R. No. 202877, 09 December 2015], where it ruled that the Court of Appeals had no jurisdiction over the revocation by the Office of the President of the financial or technical assistance agreement of Narra Nickel Mining and Development Corporation, Tesoro Mining and Development and McArthur Mining, Inc. (collectively, the “Mining Corporations”) over several mining areas in Palawan (the “Subject FTAA”), raises the interesting question of what a mining company’s remedies are in such a situation. At the outset, I wish to clarify that I am not commenting on the merits of this case, but only its procedural aspects.

In this case, Redmont Consolidated Mines Corporation (“Redmont”) filed a petition for the cancellation and/or revocation of the FTAA with the Office of the President on the basis of alleged misrepresentations by the Mining Corporations that they are Filipino corporations qualified to engage in mining activities.

The Office of the President determined that, since the power to enter into FTAA’s belongs exclusively to the President, the President also has the power to revoke the same. In exercising this authority, the Office of the President revoked the Subject FTAA.

The Mining Corporations then filed an appeal under Rule 43 of the Rules of Court with the Court of Appeals, questioning the revocation. In acknowledging the power of the President to revoke the same, the Court of Appeals affirmed the action of the Office of the President. The Mining Corporations then elevated the matter to the Supreme Court.



The Supreme Court held that the Court of Appeals does not have jurisdiction over the matter since the revocation of the Subject FTAA was done by the Office of the President in the exercise of its administrative powers.

It ruled that the remedy under Rule 43 of the Rules of Court may only be availed of when the questioned judgment, order or resolution was done in the exercise of the officer’s quasi-judicial function or “the power of the administrative agency to adjudicate the rights of persons before it”.

The Supreme Court classified the Subject FTAA as a government or public contract, thereby making laws applicable to agreements between private individuals also applicable to FTAA’s.

Hence, since the Subject FTAA contains a provision allowing the cancellation of the agreement by either party due to “any intentional and materially false statement or omission of facts by any party”, the Supreme Court ruled that the Office of the President “merely exercised a contractual right by cancelling/revoking said agreement, a purely administrative action which should not be considered as quasi-judicial in nature”.

However, while the Supreme Court pointed out that the recourse of Redmont to the Office of the President with respect

to an executed FTAA to which it was not a party was “done outside the correct course of procedure” and that, absent the exercise of the Office of the President of quasi-judicial power, the Court of Appeals cannot take cognizance of Redmont’s, the revocation of the Subject FTAA was nevertheless upheld.

This leaves us with the question of the proper remedy of a mining company when its FTAA has been revoked or cancelled by the Office of the President. The Philippine Mining Act of 1995 and its implementing rules and regulations are silent on the remedy for the cancellation of an FTAA. Even though the Philippine Mining Act provides for the cancellation of an FTAA when a party thereto made false statements or omission of facts therein, it does not contain a provision allowing appeal from the same.

Likewise, Administrative Order No. 22, Series of 2011, which governs appeals to the Office of the President, does not provide for an appeal from a decision of the Office of the President in exercise of the President’s administrative powers.

Notably, in *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation* [541 SCRA 166 (2007)], the Supreme Court recognized the power

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of the Department of Environment and Natural Resources (“DENR”) Secretary to approve mineral agreements as a purely administrative function and ruled that, in the exercise of such, the courts will not interfere with the same and the decisions of the administrative bodies shall be upheld except “upon proof of grave abuse of discretion, fraud, or error of law”.

Granting that a decision of an administrative body may be taken cognizance of by courts where there is grave abuse of discretion, the special civil action for certiorari under Rule 65 of the Rules of Court, which is the proper remedy for grave abuse of discretion, may still not apply in case of the President’s revocation of an FTAA.

In *Philippine Migrants Rights Watch Inc. v. Overseas Workers Welfare Administration* [742 SCRA 383 (2014)], the Supreme Court held that, since the respondents were acting in line with their quasi-legislative and administrative functions, a special civil action for certiorari is not a proper remedy.

Recently, the Supreme Court, in *Basiana Mining Exploration Corporation v. DENR Secretary* [G.R. No. 191705, 07 March 2016], stated that even the act of the DENR Secretary in approving an application for, and entering into, mineral agreements is an administrative power, which cannot be reviewed by the Court of Appeals whether by petition for review under Rule 43 or a special civil action of certiorari under Rule 65 of the Rules of Court.

The Supreme Court stated that the DENR Secretary does not determine the legal rights and obligations of adversarial parties and added that the powers of the DENR Secretary are all executive and administrative in nature. Purely administrative and discretionary functions may not be interfered with by the courts. In this case, the Supreme Court advised that the petitioner should have appealed to the Office of the President, instead of directly seeking review by the court.

Following the rationale of the Supreme



**Australian Amb. Amanda Gorely**

Court in *Narra* that laws on agreements between private individuals shall generally apply to FTAA’s, it appears a party thereto may invoke Article 1191 of the Civil Code of the Philippines and file a civil case with the appropriate court questioning the propriety of the rescission or revocation of the FTAA. Under Article 1191, where a party in a reciprocal obligation does not comply with what is incumbent upon him, the other party may enforce the fulfillment of the obligation or its rescission, with payment of damages in either case.

In *Calilap-Asmeron v. Development Bank of the Philippines* [661 SCRA 54 (2001)], the Supreme Court acknowledged that, although a stipulation in an agreement that any party may rescind the same even without judicial intervention, the same may still be resorted to in determining the propriety of a rescission. Moreover, in *Golden Valley Exploration, Inc. v. Pinkian Mining Company* [726 SCRA 259 (2014)], the Supreme Court resolved that a party may resort to judicial action when rescission is not justified and upon finding by the court that the rescission was improper, the rescinding party will be liable for damages.

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In March, which was International Women’s Month, I had the pleasure of attending a luncheon where Australian Ambassador Amanda Gorely expounded on her views on gender equality, including what she considered the ten essential ingredients for obtaining gender balance. According to her, one of these ingredients is calling out unacceptable behavior when we see

or experience it. Weeks before her strong rebuke of a certain candidate’s unfortunate remarks, Ambassador Gorely had already called upon her audience at the luncheon to be vigilant against the “disturbing trend in politics here in the Philippines, in Australia, in the US, where women are being objectified, where they are being treated by leaders as sexual objects, where they’re being insulted, patronized, de-professionalized and abused.”

She even cautioned that unacceptable behavior even occurs in subtle ways in everyday situations: in sexist jokes told when introducing a female speaker; the failure to include women in conference lineups, and making comments about a woman’s age of appearance when they same comments would not be made against a man. Thus, her unequivocal declaration that “(R)ape and murder should never be joked about or trivialised. Violence against women and girls is unacceptable anytime, anywhere,” came as no surprise.

She herself has admitted that speaking out against such behavior is often risky and even “subversive”, but her fearlessness has given many women courage not to let these situations pass. ■



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