In The News

Foes Battling Over Mexican Gold Mine Discover Rich Vein of — Litigation

06.01.21

The Texas Lawbook

A long, labyrinthine legal battle over a Mexican gold mine took its latest – but surely not its last – turn last month in Dallas when a state judge refused to recognize a $48 million foreign judgment in favor of an Irving-based mining company.

The ruling by Dallas County District Judge Dale B. Tillery in effect means the 2015 judgment, awarded by a Mexico City court to DynaResource Inc. of Irving, remains worthless in the United States.

It was the latest setback for DynaResource in its nine-year litigation showdown with Goldgroup Resources Inc. of Vancouver, British Columbia. The two mining concerns, through joint interest in a Mexican subsidiary of DynaResource, control the San Jose de Gracia Project, a gold-mining enterprise potentially covering 170,081 acres in Sinaloa, Mexico. Since an acrimonious falling-out over governance of the mining operation, the partners have been at each other's throats, filing suit upon suit, appeal upon appeal, in Mexico, Texas and Colorado.

The matter before Tillery arose from a lawsuit DynaResource filed in Mexico City two days before Christmas in 2014, accusing Goldgroup of sundry corporate misdeeds related to the gold-mining venture, all of which Goldgroup has denied.

In refusing to recognize the $48 million judgment, Tillery effectively froze the value of that judgment in the United States where it's always been: at zero. No American court has recognized, or "domesticated," the foreign judgment. Until a court in some state does so, the judgment is unenforceable in that state – and, as a practical matter, anywhere else in the United States.

In a terse finding of fact that accompanied his ruling, Tillery called the Mexican court's judgment and the suit that gave rise to it "repugnant to the public policy of the state of Texas and the United States" and "not compatible with the requirements of due process of law."

The judge didn't elaborate on that stinging observation in his denial of DynaResource's petition for recognition of the judgment. He did, however, grant "in its entirety" a motion by Goldgroup opposing recognition. In that motion, Goldgroup's lead attorney, Jamil N. Alibhai, a shareholder with Munsch Hardt Kopf & Harr in Dallas, catalogued what he said were a half-dozen defects that made the Mexico City litigation a sham.

The lawsuit, Alibhai wrote, violated a written agreement between the two companies to resolve disputes through binding arbitration, with Denver as the agreed-upon venue. The Mexico City court, he added, "was not competent to hear" the case and "did not have jurisdiction over Goldgroup."

Furthermore, he wrote, Goldgroup was not properly served with the suit. Elaborating in an interview with The Texas Lawbook, Alibhai said his client never appeared before the Mexico City court or participated in the proceedings in any way; the court ruled and assessed $48 million in damages based on what it was told by one side only.

"It wasn't a verdict," he said. "There was no trial."

Working with Alibhai on the case are Munsch Hardt shareholder Greg Noschese and associate Patrick Dean.

DynaResource's lawyer, Gerrit M. Pronske, a partner in the Plano office of Spencer Fane, said that while Tillery's ruling was, overall, unfavorable to his client, it did significantly declare the $48 million judgment to be "final, conclusive and enforceable according to the law of Mexico," meaning the Irving company can continue to prosecute its claims there, even if it's void in the United States.

Pronske disputed Goldgroup's claims that it wasn't properly served with the Mexico City suit, saying Goldgroup's decision not to take part in the proceedings was a strategic move, not the result of improper notice. He added that the Mexico City court was a proper forum, arguing that Goldgroup waived the binding arbitration agreement by suing DynaResource years earlier in Mazatlán, Mexico, in a separate but related dispute.

Like nearly everything about this case, even the present equity ownership of the mining venture is a matter of disagreement between DynaResource and Goldgroup. DynaResource claimed last year that under Mexican law it was "effectively foreclosing on all shares" of the mining operation owned by Goldgroup. Goldgroup counters that its interest in the San Jose de Gracia Project has been affirmed under U.S. law by an arbitrator, a federal district court in Colorado and the Tenth U.S. Circuit Court of Appeals.

"They've got a judgment in the United States," Pronske said, "and we've got a judgment in Mexico."

The bitter conflict, experts say, illustrates both the strengths and limitations of binding arbitration agreements, particularly in resolving disputes that arguably cross international boundaries. And it serves as a cautionary tale about entering into such agreements in business arrangements where, given the nature of the parties, disputation is likely to lead to litigation.

"If arbitration is done right, it can typically reduce the time and cost in attorneys' fees of resolving disputes," said Mark A. Shank, senior counsel in the Dallas office of Diamond McCarthy and a nationally recognized trial lawyer, arbitrator and mediator.

"It's a great first step. But arbitration can't stop people from being jerks and clogging things up," said Shank, a former president of the Dallas Bar Association.

John Allen Chalk, a negotiator, litigator, arbitrator and mediator with Whitaker Chalk of Fort Worth, agreed.

"Frankly," he said, "it's not peculiar or particularly unique that an arbitration award winds up being litigated through the courts. And battles over competing judgments are not at all unique to the process of arbitration.

"Any time there's a dispute over large amounts of money, the competing sides will seek whatever advantage they can seek in the courts."

The day after Tillery ruled, Pronske filed a notice of appeal to the Fifth Court of Appeals in Dallas, all but ensuring that the war of words between DynaResource and Goldgroup will continue.

After more than five years of haggling over the $48 million judgment, the two business partners, in assaying its true worth, remain $48 million apart.

At this point, they're as likely to amicably resolve their differences – rather than continuing to sue one another all over hell's half acre – as an amateur prospector roaming the Superstition Mountains on a burro is to find the Lost Dutchman's Mine.

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DynaResource and Goldgroup became gold-mining partners in 2011, when Goldgroup purchased a half interest in the San Jose de Gracia mine for $18 million. (More precisely, Goldgroup exercised an option to buy a 50% equity interest in DynaResource de México, the DynaResource subsidiary that owned 100% of the mining operation.) According to Mexican authorities, the San Jose de Gracia district yielded more than 1 million ounces of gold in the early 1900s – and may yet hold even more. (Sinaloa is on the east coast of the Gulf of California, directly across the narrow waterway from Cabo San Lucas, the popular resort destination at the tip of the Baja California Peninsula.)

Like a Kardashian marriage engagement, the relationship quickly unraveled.

From the start, Goldgroup said, it was excluded from important management decisions about expenditures and financial oversight. In 2013, Goldgroup contended, DynaResource deliberately diluted Goldgroup's interest in the mine to 20% by issuing new shares without notifying its Canadian partners.

DynaResource, in turn, accused Goldgroup of publicly exaggerating its ownership interest in the mine, leaking confidential business information, threatening DynaResource managers in Mexico, "attempting to delay, stop, or otherwise impair" development of the gold mine and otherwise acting in ways that deprived the venture of potential profits. By and large, these accusations found their way into the Mexico City lawsuit that DynaResource filed two days before Christmas 2014 in the Tribunal Superior de Justicia del Distrito Federal. On Oct. 5, 2015, the court ruled in DynaResource's favor and awarded the company $48 million in damages.

Goldgroup's position, then and now, was that the tribunal had no business issuing a judgment – not for $48 million and not for 48 cents – because DynaResource had no business seeking one.

In 2006, when the companies were in negotiations to team up, they signed a 21-page agreement that included two brief provisions which, Alibhai would write years later, became "the basis of the business relationship between the parties." One was a joint pledge to resolve disputes through binding arbitration. The other designated Denver as the forum for dispute resolution.

DynaResource, court records show, has fared poorly in arbitration with Goldgroup, and the Irving company has tried for years, in one venue after another, to get out of the binding-arbitration agreement or at least narrow the scope of its applicability.

The Mexico City court accommodated this desire.

In addition to its award of monetary damages, the court declared the arbitration agreement between the two partners unenforceable. This was, from the court's standpoint, somewhat a matter of self-justification: Had it not deemed the arbitration clause inapplicable, DynaResource wouldn't have been able to file suit in Mexico. The company instead would have been bound to submit its claims to arbitration in Denver,

American courts have consistently upheld the validity of the arbitration agreement. Most recently, on April 16 – while the question of recognizing the Mexico City judgment was pending before Tillery – the 10th U.S. Circuit Court of Appeals in Denver affirmed an arbitrator's 2016 findings in favor of Goldgroup. The Canadian company alleged in that case that DynaResource had breached the parties' agreement through numerous management actions and legal maneuverings. The arbitrator agreed, awarding Goldgroup damages and attorneys' fees totaling more than $1 million.

The Tenth Circuit opinion said that DynaResource "engaged in forum shopping" by running to the courthouse in Mexico City and that DynaResource failed "to provide any argument or authority" to support the notion that a Mexican court's judgment should trump the arbitrator's.

DynaResource's position, stated very informally, seems to be (to paraphrase Gold Hat, the Mexican bandido posing as a federale in John Huston's 1948 classic film, The Treasure of the Sierra Madre):"Authority? ... We don't need no authority. I don't have to show you any stinkin' authority!"

In November 2015, the company refused even to participate in a court-ordered hearing before the Denver arbitrator, claiming that its Mexico City judgment, secured a month earlier, was "way more mandatory."

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