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Rose Rodriguez
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ATTY. GANDHI G. GAGNI-FLORES
Chief, Legal Division
Department of Environment and Natural Resources (DENR)
1515 L&S Building,
Roxas Boulevard, Ermita,
Manila 1000

RE: DENR NOTICE TO VACATE ISSUED TO SPIN DESIGNER HOSTEL

Dear **Atty. Gagni-Flores**:

We write on behalf of our client, Somersault Holdings El Nido, Inc., proprietor of Spin Designer Hostel (**"Client"**).

On 10 April 2018, our Client received a letter entitled Notice to Vacate from your office dated 3 April 2018 (**"Notice to Vacate"**). In the Notice to Vacate, our Client was given thirty (30) days to: (**i**) voluntarily remove the structure/s they built; and (**ii**) vacate the area due to a report made by the Timberland Encroachment Committee stating that their establishment is within a timberland area per the Land Classification Map No. 1187 dated 7 September 1935.

Moreover, it was alleged in the Notice to Vacate that our Client also violated the following provisions of law:

- Section 20 and 78 of Presidential Decree No. 705, otherwise known as The Revised Forestry Code of the Philippines (**"P.D. No. 705"**);
- Section 51 of Presidential Decree No. 1067, otherwise known as The Water Code of the Philippines (**"P.D. No. 1067"**);
- Section 20 of Republic Act No. 7586, otherwise known as the national Integrated Protected Areas System Act of 1992 (**"R.A. 7586"**); and
- Proclamation No. 32, Series of 1998.

Our Client was surprised, to say the least, by its receipt of the Notice to Vacate from your Office, as it has no knowledge or even information at all about any of the alleged violations outlined in your letter. We respectfully submit that the Notice to Vacate and the alleged violations mentioned therein, are based on erroneous and incorrect information provided to you.

Anent the afore-mentioned allegations, we hereby assert the following in support of our Client's position:

I. THE PARCEL OF LAND WHERE SPIN DESIGNER HOSTEL STANDS IS COVERED BY A TORRENS CERTIFICATE OF TITLE

The parcel of land where Spin Designer Hostel (**"Spin Hostel"**) stands is covered by a title: Transfer Certificate of Title No. 065-2012000255 (**"TCT No. 065-2012000255"**) issued 12 March 2012, in the name of our Client, a transfer from its predecessor title Original Certificate of Title No. E-1713 (**"OCT No. E-1713"**) issued 4 February 1935, under the name of Florentina C. de Rodriguez (**"Property"**).

Being a titled property, there is a conclusive presumption that prior to the issuance of the title, the land where the Property stands has already been declared by the government as alienable and disposable, and therefore removed from the timberland classification. Settled is the rule that the government may not grant a free or homestead patent, and issue titles, over properties that are not classified as alienable and disposable.

By way of antecedent facts, the parcel of land where Spin Hostel stands was previously owned by the Heirs of Florentina C. de Rodriguez (**"Heirs of Rodriguez"**). The Property was then covered by OCT No. E-1713, issued on 4 February 1935 under the name of Florentina C. de Rodriguez (**"Rodriguez"**).

OCT No. E-1713 was issued pursuant to Section 41 of Act No. 2874 or the Public Land Act, the law in force at the time the title was issued, to wit:

> "**Section 41.** Any native of the Philippine Islands who is not the owner of more than twenty-four hectares, and who since July fourth, nineteen hundred and seven, or prior thereto, has continuously occupied and cultivated, either by himself or through his predecessors in interest, **a tract or tracts of agricultural public lands subject to disposition, shall be entitled, under the provisions of this chapter, to have a free patent issued to him for a tract or tracts of such land not to exceed twenty-four hectares** (As amended by section 1 of Act No. 3164)." ***(Emphasis and underscoring supplied.)***

Furthermore, OCT No. E-1713 was issued by virtue of a free patent dated 15 January 1935, and was based on a survey made on 19 October 1933, which was approved on 10 November 1934.

A copy of OCT No. E-1713 is attached hereto as **Annex "A"** for your easy reference.

Under the Public Land Act, only lands of the public domain that are alienable and disposable may be applied for a free patent.[1] Since the free patent application submitted by Rodriguez was granted by the government on 15 January 1935, it can therefore be assumed that during that time, the land has already been declared as alienable and disposable.

It is also worth noting that the validity of OCT No. E-1713 was never questioned by any government agency from 1935 until this date, or for 83 years, giving rise to the presumption that the same was issued by the Bureau of Lands in accordance with the provisions of the Public Land Act. Absent any proof to the contrary, the Bureau of Lands is presumed to have regularly performed their official duty when they issued OCT No. E-1713. In the case of ***Spouses Carpo vs. Ayala Land Incorporated*, G.R. No. 166577, (3 February 2010),** the Honorable Supreme Court held:

> "We quote with approval the discussion of the CA on this point:
>
> > "xxx **Moreover, the land registration court must be assumed to have carefully ascertained the propriety of issuing a decree in favor of ALIs predecessor-in-interest, under the presumption of regularity in the performance of official functions by public officers. xxx This is as it should be, because once a decree of registration is made under the Torrens system, and the time has passed within which that decree may be questioned the title is perfect and cannot later on be questioned. There would be no end to litigation if every litigant could, by repeated actions, compel a court to review a decree previously issued by another court forty-five (45) years ago. The very purpose of the Torrens system would be destroyed if the same land may be subsequently brought under a second action for registration** xxx"

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[1] Section 8 of Act No. 2874 states, to wit:

> "**Section 8.** Only those lands shall be declared open to disposition or concession which have been officially delimited and classified and, when practicable, surveyed, and which have not been reserved for public or quasi-public uses, not appropriated by the Government, nor in any manner become private property, nor those on which a private right authorized and recognized by this Act or any other valid law may be claimed, or which, having been reserved or appropriated, have ceased to be so. However, the Governor-General may, for reasons of public interest, declare lands of the public domain open to disposition before the same have had their boundaries established or been surveyed, or may, for the same reasons, suspend their concession or disposition by proclamation duly published or by Act of the Legislature." *(Underscoring supplied.)*

> "xxx A party dealing with a registered land need not go beyond the Certificate of Title to determine the true owner thereof so as to guard or protect his or her interest. Hence, ALI was not required to go beyond what appeared in the transfer certificate of title in the name of its immediate transferor. **It may rely solely, as it did, on the correctness of the certificate of title issued for the subject property and the law will in no way oblige it to go behind the certificate of title to determine the condition of the property. This is the fundamental nature of the Torrens System of land registration, to give the public the right to rely upon the face of a Torrens certificate of title and to dispense with the need of inquiring further.**"

> "xxx In the absence of proof to the contrary, OCT No. 242 and its derivatives, including ALIs TCT No. T-41262, **enjoy the presumption of regularity and ALI need not allege or prove that its title was regularly issued. That is precisely the nature of such a presumption, it dispenses with proof**. xxx" ***(Emphasis and underscoring supplied.)***

Sometime in 2011, the Heirs of Rodriguez sold the Property in favor of our Client. It should be noted that during the negotiations for the Property's sale, there were no annotations or encumbrance on the face of OCT No. E-1713 that would indicate any defect or flaw as to its issuance. Settled is the rule that every person dealing with registered land may safely rely on the correctness of its certificate of title, and the law will not oblige him to go beyond what appears on the face thereof to determine the condition of the property.[2]

Thereafter, our Client applied for the issuance of a transfer certificate of title (**"TCT"**) under its name with the Registry of Deeds of Palawan (**"Palawan RD"**). On 12 March 2012, the Palawan RD issued TCT No. 065-2012000255 in favor of our Client. It should be noted that the Palawan RD did not make any objections with regard the aforementioned application.

A copy of TCT No. 065-2012000255 is attached hereto as **Annex "B"** for easy reference.

At the time the Property was sold to our Client, the classification of the land was "residential", as evidenced by Tax Declaration No. 000117-K dated 18 July 2005, issued under the name of Rodriguez. The land was then re-classified as "commercial", as evidenced by Tax Declaration No. 13-001- dated 28 December 2017.

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[2] ***San Roque Realty and Development Corporation vs. Republic,*** G.R. No. 163130, (7 September 2007).

Copies of Tax Declaration No. 000117-K and Tax Declaration No. 13-001-0142 are attached hereto as **Annexes "C"** and **"D"**, respectively, for your easy reference.

As already mentioned, for over 83 years, not a single question as regards the validity of OCT No. E-1713, and its derivative TCT No. 065-2012000255, was ever raised by the government or any public authority. The said silence and inaction on the part of the government only bolsters the fact that OCT No. E-1713 and TCT No. 065-2012000255 was issued in accordance with the provisions of the Public Land Act. As such, when OCT No. E-1713 and the free patent prior thereto were issued, the land was already declared as alienable and disposable.

Any act to disturb this fact would now be barred by estoppel and laches. While it is true that as a general rule, the doctrine of estoppel does not apply against the government, the Honorable Supreme Court held in ***San Roque Realty and Development Corporation vs. Republic*, G.R. No. 163130, (7 September 2007),** that the rule admits of certain exceptions, such as when application of the rule will defeat the effectiveness of a policy adopted to protect the public such as the Torrens system, to wit:

> **"The general rule is that the State cannot be put in estoppel or laches by the mistakes or errors of its officials or agents. This rule, however, admits of exceptions. One exception is when the strict application of the rule will defeat the effectiveness of a policy adopted to protect the public such as the Torrens system.**
>
> **"In *Republic v. Court of Appeals*, we ruled that the immunity of government from laches and estoppel is not absolute, and the government's silence or inaction for nearly twenty (20) years (starting from the issuance of St. Jude's titles in 1966 up to the filing of the Complaint in 1985) to correct and recover the alleged increase in the land area of St. Jude was tantamount to laches.**
>
> "In the case at bench, the Republic failed to register the subject properties in its name and incurred in laches spanning more than five-and-a-half (5 ½) decades. Even if we were to accede to the Republic's contention that the Exception and Notice of Intention to Appeal filed by the original owners of Lot No. 933 initially prevented it from registering said property in its name, **we would still be hard pressed to find justification for the Republic's silence and inaction for an excessively long time."** ***(Emphasis and underscoring applied.)***

In the case of ***Estate of Yujuico vs. Republic*, G.R. No. 1688661, (26 October 2007),** the Honorable Supreme Court held that equitable estoppel may be invoked against public authorities in cases wherein the

property was already alienated to innocent buyers for value, and the government did not undertake any act to contest the title for an unreasonable length of time, to wit:

> "**Equitable estoppel may be invoked against public authorities when as in this case, the lot was already alienated to innocent buyers for value and the government did not undertake any act to contest the title for an unreasonable length of time.**
>
> "In Republic v. Court of Appeals, where the title of an innocent purchaser for value who relied on the clean certificates of the title was sought to be cancelled and the excess land to be reverted to the Government, we ruled that **"[i]t is only fair and reasonable to apply the equitable principle of estoppel by laches against the government to avoid an injustice to innocent purchasers for value** xxx"
>
> "xxx *Republic v. Court of Appeals* is reinforced by our ruling in *Republic v. Umali*, where, **in a reversion case, we held that even if the original grantee of a patent and title has obtained the same through fraud, reversion will no longer prosper as the land had become private land and the fraudulent acquisition cannot affect the titles of innocent purchasers for value.**
>
> "xxx **While the general rule is that an action to recover lands of public domain is imprescriptible, said right can be barred by laches or estoppel. Section 32 of PD 1592[3] recognized the rights of an innocent purchaser for value over and above the interests of the government.**" ***(Emphasis and underscoring supplied.)***

To reiterate, our Client bought the property in good faith since at the time of the sale, there was no annotation, encumbrance, or any form of irregularity on the face of OCT No. E-1713. As held by the Honorable Supreme Court in the case of ***Republic vs. Court Of Appeals,* G.R. No. 116111, (21 January 1999),** persons dealing with registered land may safely rely on the correctness of the certificate of title, and the law does not oblige

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[3] Section 32 of Presidential Decree 1529 states, to wit:

> SEC. 32. Review of decree of registration; Innocent purchaser for value.—The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, **but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced**. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrances for value." ***(Emphasis and underscoring supplied.)***

them to go behind the certificate in order to investigate the true condition of the property, to wit:

> **"Likewise time-settled is the doctrine that where innocent third persons, relying on the correctness of the certificate of title, acquire rights over the property, courts cannot disregard such rights and order the cancellation of the certificate. Such cancellation would impair public confidence in the certificate of title, for everyone dealing with property registered under the Torrens system would have to inquire in every instance whether the title has been regularly issued or not. This would be contrary to the very purpose of the law, which is to stabilize land titles. Verily, all persons dealing with registered land may safely rely on the correctness of the certificate of title issued therefor, and the law or the courts do not oblige them to go behind the certificate in order to investigate again the true condition of the property. They are only charged with notice of the liens and encumbrances on the property that are noted on the certificate."**
> ***(Emphasis and underscoring supplied.)***

Moreover, when our Client applied for several permits with the local government and the DENR, the same were granted without any issues as regards to the validity of the title *(please refer to page 9 and 10 of this letter)*. If indeed there was any defect on our Client's title, the said government agencies could have easily alerted our Client of such defect. However, they did not do so. Again, these government agencies, including the DENR, are already in estoppel.

Finally, even assuming, without conceding, that fraud attended the issuance of OCT No. E-1713 in 1935, it is impossible for our Client to have participated in the said fraud.

Since the Property is undeniably titled in the name of our Client, and its predecessor in interest, its title over the Property cannot now be questioned.

III. SPIN HOSTEL DID NOT COMMIT ANY ACTS IN VIOLATION OF SECTION 20 OR ANY OTHER PROVISIONS PRESIDENTIAL DECREE NO. 705

Section 20 of Presidential Decree No. 705 or the Revised Forestry Code of the Philippines states, to wit:

> "**Section 20.** *License agreement, license, lease or permit.* No person may utilize, exploit, occupy, possess or conduct any activity within any forest land, or establish and operate any wood-processing plant, unless he has been authorized to do so under a license agreement, lease, license, or permit."

As discussed, the area where Spin Hostel stands is covered by OCT No. E-1713, which was issued on 5 February 1935. Pursuant thereto, the Property is located in an area not classified as forest lands.

Assuming, arguendo, that the land, after the issuance of OCT No. E-1713 on 5 February 1935, was thereafter re-classified as forest land, the said re-classification should not affect vested private rights, which was defined by Section 3 (mm) of the Revised Forestry Code as follows:

> "(mm) **Private right means or refers to titled rights of ownership under existing laws**, and in the case of primitive tribes, to rights of possession existing at the time a license is granted under this Code, which possession may include places of abode and worship, burial grounds, and old clearings, but excludes production forest inclusive of logged-over areas, commercial forests and established plantations of forest trees and trees of economic value." *(Emphasis and underscoring supplied.)*

Any titled property should therefore not be affected by any subsequent land re-classifications, as it violates the vested rights of those who have acquired them, effectively depriving them of their properties without affording them their constitutional right to due process.

Lands that are already considered alienable and disposable could not be retroactively classified as forest lands, as held by the Honorable Supreme Court in the case of ***Director of Forestry vs. Villareal,* G.R. No. L-32266, (27 February 1989)**:

> "Our previous description of the term in question as pertaining to our agricultural lands should be understood as covering only those lands over which ownership had already vested before the Administrative Code of 1917 became effective. **Such lands could not be retroactively legislated as forest lands because this would be violative of a duly acquired property right protected by the due process clause**. So we ruled again only two months ago in Republic of the Philippines vs. Court of Appeals, where the possession of the land in dispute commenced as early as 1909, before it was much later classified as timberland." ***(Emphasis and underscoring supplied.)***

Based on the foregoing, Spin Hostel therefore did not, and could not, violate Section 20 or any other provisions of the Revised Forestry Code.

IV. SPIN HOSTEL DID NOT VIOLATE ARTICLE 51 OF PRESIDENTIAL DECREE NO. 1067

Article 51 of Presidential Decree No. 1067 or the Water Code of the Philippines states, to wit:

> **"Article 51. The banks of rivers and streams and the shores of the seas and lakes throughout their entire length and within a zone of three (3) meters in urban areas, twenty (20) meters in agricultural areas** and forty **(40) meters in forest areas**, along their margins are **subject to the easement of public use in the interest of recreation, navigation, floatage, fishing and salvage**. No person shall be allowed to stay in this zone longer than what is necessary for recreation, navigation, floatage, fishing or salvage or to build structures of any kind." ***(Emphasis and underscoring supplied.)***

Spin Hostel is located well outside the zone areas referred to in Article 51 of the Water Code of the Philippines. Given the foregoing circumstance, Spin Hostel therefore did not, and could not, violate Article 51 of the Water Code of the Philippines.

V. SPIN HOSTEL DID NOT COMMIT ANY ACTS IN VIOLATION OF SECTION 20 (f) and (g) OF REPUBLIC ACT NO. 7586

Section 20 (f) and (g) of Republic Act No. 7586 or the National Integrated Protected Areas System Act of 1992 states, to wit:

> **"Section 20.** *Prohibited Acts.* – **Except as may be allowed by the nature of their categories and pursuant to rules and regulations governing the same**, the following acts are prohibited within protected areas: xxx
>
> "f. **Squatting**, mineral locating, **or otherwise occupying any land;**
>
> "g. **Constructing or maintaining any kind of structure, fence or enclosures, conducting any business enterprise without a permit**; xxx" ***(Emphasis and underscoring supplied.)***

Anent the provisions of Section 20 (f), it has been previously discussed that the subject land is registered in favor of our Client, as evidenced by TCT No. 065-2012000255 (**Annex "B"**). By virtue of the said title, our Client is legally entitled to occupy and posses the said land. Being the legal occupant of the Property, our Client therefore could not violate Section 20 (f) of Republic Act No. 7586

With regard our Client's alleged violation of Section 20 (g) of Republic Act No. 7586, it should be noted that the following permits were issued in favor of our client:

- Environmental Compliance Certificate ECC-R4B-1404-0044 (**"ECC No. R4B-1404-0044"**) issued by the DENR

Environmental Management Bureau, Regional Office No. IV – B MIMAROPA, attached hereto as **Annex "E"**;

- Building Permit No. 13080013 issued on 22 August 2013, attached hereto as **Annex "F"**;

- Protected Area Management Board (PAMB) Endorsement dated 30 July 2013 issued by the DENR Office of the Protected Area Superintendent of the El Nido – Taytay Managed Resource Protected Area, attached hereto as **Annex "G"**; and

- SEP Clearance dated 12 December 2013 issued by the Palawan Council for Sustainable Development attached hereto as **Annex "H"**.

Given that our Client **(i)** was granted the aforementioned government permits from government agencies, including the DENR, even prior to the construction of any structure on the Property, and **(ii)** has since lawfully operated its business pursuant to the conditions set forth in the aforementioned permits, our Client clearly did not violate Section 20 (g) of Republic Act No. 7586.

VI. SPIN HOSTEL'S VESTED PRIVATE RIGHTS OVER THE PROPERTY SHOULD BE RESPECTED, DESPITE THE ENACTMENT PROCLAMATION NO. 32, SERIES OF 1998

Proclamation No. 32, Series of 1998, states, to wit:

> "Upon recommendation of the Secretary of Environment and Natural Resources and pursuant to the powers vested upon me by law, I, JOSEPH EJERCITO ESTRADA, President of the Republic of the Philippines, do hereby set aside and declare EL NIDO MARINE RESERVE, consisting of parcels of land and water situated in the Municipality of El Nido, Province of Palawan as a protected area under the category of Managed Resource Protected Area. As such, it would ensure a long-term protection and maintenance of biological diversity, while providing at the same time a sustainable flow of natural products and services to meet community needs. **This proclamation is subject to private rights,** including those of the Indigenous Peoples as provided for in Republic Act No. 8371, DENR Administrative Order 93-02 and other related rules and regulations." ***(Emphasis and underscoring supplied.)***

The Property's previous owner, Florentina C. de Rodriguez, undoubtedly acquired a vested right over the Property upon the issuance of OCT No. E-1713 on 4 February 1935. Rodriguez and her heirs continued to enjoy the said right for 76 years, until the same were transferred to our Client sometime in 2011 through TCT No. 065-2012000255.

In the case of ***Gonzalo Go vs. Court of Appeals*, G.R. No. 172027, (19 July 2010)**, the Honorable Supreme Court defined a vested right, to wit:

> "A vested right is one whose existence, effectivity and extent do not depend upon events foreign to the will of the holder, or to the exercise of which no obstacle exists, and which is immediate and perfect in itself and not dependent upon a contingency. The term vested right expresses the concept of present fixed interest which, in right reason and natural justice, should be protected against arbitrary State action, or an innately just and imperative right which enlightened free society, sensitive to inherent and irrefragable individual rights, cannot deny.
>
> "**To be vested, a right must have become a title legal or equitable to the present or future enjoyment of property**." ***(Emphasis and underscoring supplied.)***

Clearly, Rodriguez's right over the Property has become a legal title when the Registry of Deeds validly issued OCT No. E-1713. The said right was thereafter transferred to our Client through TCT No. 065-2012000255.

Anent the issue that our Client violated the provisions of Proclamation No. 32, it should be noted that the proclamation itself stated that it is "subject to private rights".

Settled is the rule that legislative or executive enactments may not impair vested rights. As stated by the Honorable Supreme Court in ***Ayog vs. Cusi*, G.R. No. L-46729, (19 November 1982):**

> "**A state may not impair vested rights by legislative enactment, by the enactment or by the subsequent repeal of a municipal ordinance, or by a change in the constitution of the State, except in a legitimate exercise of the police power**." ***(Emphasis and underscoring supplied.)***

Given that our Client has undoubtedly acquired vested private rights over the Property, the same should be honored pursuant to the provisions of Proclamation No. 32 and the vested right doctrine, as held by the Honorable Supreme Court in the case of ***Yinlu Bicol Mining Corporation vs. Trans-Asia Oil and Energy Development Corporation*, G.R. No. 207942, (12 January 2015),** to wit:

> **"The due process clause prohibits the annihilation of vested rights.** xxx
>
> "It has been observed that, generally, **the term "vested right" expresses the concept of present fixed interest, which in right reason and natural justice should be protected against arbitrary State action**, or an innately just and imperative right which an enlightened free society, sensitive to inherent and irrefragable individual rights, cannot deny xxx
>
> "Its compliance with the requirements of the Public Land Law for the issuance of a patent had the effect of segregating the said land from the public domain. The corporation's right to obtain a patent for that land is protected by law. **It cannot be deprived of that right without due process xx** (Director of Lands v. CA, 123 Phil. 919)." ***(Emphasis and underscoring supplied.)***

We hope that the foregoing discussions have sufficiently refuted all allegations against our Client, as stated in the Notice to Vacate dated 3 April 2018. We are in support of the DENR's efforts in protecting and conserving El Nido and its natural resources.

Sincerely,

ATTY. ARIEL SALVADOR H. MAGNO

ATTY. KAREN ANNE G. SANTOS