

Republic of the Philippines
REGIONAL TRIAL COURT
Fourth Judicial Region
Branch 38
Boac, Marinduque
Email: rtcboa038@judiciary.gov.ph

**REPUBLIC OF THE
PHILIPPINES,**
represented by the
**Regional Director of the
Department of
Environment and Natural
Resources (DENR) –
MIMAROPA Region,**

Plaintiff,

-vs-

Civil Case No. 18-11
For: Cancellation of
Title and Reversion

**MARCOPPER MINING
CORPORATION and THE
REGISTER OF DEEDS OF
MARINDUQUE,**

Defendants.

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OPPOSITION

*(to Marcopper's Motion for Reconsideration dated 26 July
2022 Re: Resolution dated 30 June 2022)*

Plaintiff, through the **OFFICE OF THE SOLICITOR
GENERAL (OSG)**, to this Honorable Court respectfully
states:

1. On 17 August 2022, the OSG received a copy of this Honorable Court's Order dated 16 August 2022, requiring the plaintiff to file its Comment/Objection to the Motion for Reconsideration (Re: Resolution dated 30 June 2022) dated 26 July 2022 filed by defendant Marcopper Mining Corporation (Marcopper) within ten (10) days from receipt thereof, or until 28 August 2022.

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2. Defendant Marcopper filed its pertinent Motion for Reconsideration to plead liberality from the strict application of the Rules in order that the offered Exhibits "13" to "21" will form part of its documentary evidence, which were previously not admitted through the Resolution dated 30 June 2022 of this Honorable Court.

3. It must be noted, however, that defendant Marcopper clearly failed to identify and mark the Cadastral Map or Sta. Cruz Public Land Subdivision PLS-726-D Case No. 10 and its attachments labeled as Exhibits "13" to "21," respectively, in its Pre-Trial Brief and during the Pre-Trial proceedings nor was it specifically reserved thereof in blatant violation of Section 2 (g) (4) of Rule 19 of the Amended Rules of Civil Procedure, which provides in no uncertain terms, thus:

Section 2. *Nature and Purpose.* — The pre-trial is mandatory and should be terminated promptly. The court shall consider:

(g) The requirement for the parties to: xxx

4) Reserve evidence not available at the pre-trial, but only in the following manner:

1) For testimonial evidence, by giving the name or position and the nature of the testimony of the proposed witness;

2) For documentary evidence and other object evidence, by giving a particular description of the evidence. xxx¹

4. That the procedural edict governing pre-trial should be strictly complied and a relaxation thereof is limited only for compelling and persuasive reasons as emphasized by the Supreme Court in the case of *Chua v. Sps. Santiago*,² thus:

The importance of pre-trial in civil cases cannot be overemphasized. Time and

¹ *Emphases supplied.*

² G.R. No. 219309, 22 November 2017.

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again, this Court has recognized "the importance of pre-trial procedure as a means of facilitating the disposal of cases by simplifying or limiting the issues and avoiding unnecessary proof of facts at the trial, and x x x to do whatever may reasonably be necessary to facilitate and shorten the formal trial." The need for strict adherence to the rules on pre-trial thus proceeds from its significant role in the litigation process.

This is not to say, however, that the rules governing pre-trial should be, at all times, applied in absolute terms. While faithful compliance with these rules is undoubtedly desirable, they may be relaxed in cases where their application would frustrate, rather than facilitate, the ends of justice. **The relaxation of these rules, however, is contingent upon a showing of compelling and persuasive reasons to justify the same.**

It is the Court's considered view that Petitioners have failed to sufficiently show that such compelling and persuasive reasons exist in this case. Consequently, the Petition must be denied.³

5. Here, there is no such compelling and persuasive reasons available to Marcopper in order to warrant the relaxation of the rules. Emphasis must be made that as early as 2008, Marcopper had obtained and had knowledge of the Cadastral Map or Sta. Cruz Public Land Subdivision PLS-726-D Case No. 10 and its attachments which were relied upon by them that the subject land is outside the Timberland area, as evidenced by the notation thereon of certified true copy dated 30 January 2008 by a certain Alan L. Cruz, Records Officer of DENR Region IV.

6. Since Marcopper failed to introduce or mark the Cadastral Map or Sta. Cruz Public Land Subdivision PLS-726-D Case No. 10 and its attachments in their Answer, Pre-Trial Brief, and during the Pre-Trial proceedings and was not

³ Emphases supplied.

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specifically reserved, its belated introduction of such Cadastral Map or Sta. Cruz Public Land Subdivision PLS-726-D Case No. 10 only during the 16 March 2022 hearing is a serious procedural flaw and a direct affront to the rules governing pre-trial. Accordingly, there can be no valid justification in favor of Marcopper for this Honorable Court to relax the rules and admit its Exhibits "13" to "21."

7. Pertinently, we ought to be guided by the following pronouncement of the Supreme Court in *Heirs of Pasag v. Sps. Parocha*,⁴ as it held:

No evidence shall be allowed to be presented and offered during the trial in support of a party's evidence-in-chief other than those that had been identified below and pre-marked during the pre-trial. Any other evidence not indicated or listed below shall be considered waived by the parties. However, the Court, in its discretion, may allow introduction of additional evidence in the following cases: (a) those to be used on cross-examination or re-cross-examination for impeachment purposes; (b) those presented on re-direct examination to explain or supplement the answers of a witness during the cross-examination; (c) those to be utilized for rebuttal or sur-rebuttal purposes; and (d) those not available during the pre-trial proceedings despite due diligence on the part of the party offering the same.

It is apparent from the foregoing provision that both parties should obtain, gather, collate, and list all their respective pieces of evidence--whether testimonial, documentary, or object--even prior to the preliminary conference before the clerk of court or at the latest before the scheduled pre-trial conference. Otherwise, **pieces of evidence not identified or marked during the pre-trial proceedings are deemed waived and rendered inutile. The parties should strictly adhere to the principle of "laying one's cards on the table."**⁵

⁴ G.R. No. 155483, 27 April 2007.

⁵ Emphases supplied.

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8. With due respect, contrary to what Marcopper would want this Honorable Court to believe, the State never waived its objection to the introduction of the said exhibits as it, in fact, consistently and persistently opposed the admission of said exhibits in its Comment/Opposition (to the Defendant Marcopper's Formal Offer of Evidence) and even before and during the presentation of Engr. Marlon Advincula's testimony in open court, thus:⁶

COURT:

Have you received the Judicial Affidavit of the witness, Attorney.

ATTY. TURQUEZA:

Yes, Your Honor.

COURT:

Alright.

ATTY. TURQUEZA:

In fact, Your Honor, we are objecting to the annexes made in the Judicial Affidavit, Your Honor.

COURT:

Alright.

Just make a formal offer first.

ATTY. CHUA:

Yes, Your Honor.

XXX

XXX

XXX

ATTY. TURQUEZA:

Yes, Your Honor.

Your Honor, we object to the Annexes in the Judicial Affidavit of Mr. Marlon Advincula, Exhibits "13," "14," "15," "16," "17," "18," "19," "20," and "21" for being not mentioned in the Pre-Trial Brief of the defendant, and

⁶ TSN dated 16 March 2022, pp. 2 to 12.

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also not identified during the Pre-Trial of this case, and also not mentioned in the Pre-Trial Order of this case, Your Honor.

COURT:

Any comment, Attorney Chua?

ATTY CHUA:

Your Honor, that can't be done.

That is not proper for today's proceedings,
Your Honor, it is during the formal offer.

COURT:

Alright.

Just raise your objection during the formal
offer of documentary exhibits.

ATTY. CHUA:

Yes, Your Honor.

COURT:

Any objection to the direct testimony
must be based on the Question and
Answer in the Judicial Affidavit.

ATTY TURQUEZA:

**Your Honor, I am not objecting, first,
to the examination of the witness,
Your Honor, but to the attachments
made, Your Honor, because it was not
reserved during the pre-trial, Your
Honor.**

**It was not included, it was not
reserved during the pre-trial, Your
Honor.**

COURT:

So, no evidence shall be admitted unless
reserved during the pre-trial.

He has the point.

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COURT:

Ok, is it the sub-markings?

There are sheets/documents being
objected to by the counsel refers to the
whole?

ATTY. CHUA:

Yes, Your Honor.

There are many sheets, Your Honor, but
they are all came from the Office of the
DENR, Your Honor.

COURT:

What else?

ATTY. TURQUEZA:

Your Honor, only sheets, Your Honor, and
the Cadastral Map, Your Honor.

**We will be interposing our objection,
Your Honor, through a comment
during their formal offer, Your Honor.**

COURT:

Okay.

But if it came from the DENR, then what
is the point of the objection?

ATTY. TURQUEZA:

**Your Honor, it was not reserved
during the pre-trial.⁷**

9. Moreover, Marcopper may have misconstrued the Rules when it alleged that the admission of the Judicial Affidavit of Engr. Advincula carries with it the admission of all the documentary exhibits identified thereon and attached to it, including the objected exhibits. Indeed, the said documentary exhibits should still be formally offered pursuant to Section 35, Rule 132 of the Rules on Evidence, which reads:

⁷ Emphases supplied.

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Section 35. *When to make offer.* - All evidence must be offered orally.

The offer of the testimony of a witness in evidence must be made at the time the witness is called to testify. **The offer of documentary and object evidence shall be made after the presentation of a party's testimonial evidence.**⁸

10. In this regard, *Heirs of Mabborang v. Mabborang*,⁹ held:

Thus, the trial court is bound to consider only the testimonial evidence presented and exclude the documents not offered. Documents which may have been identified and marked as exhibits during pre-trial or trial but which were not formally offered in evidence cannot in any manner be treated as evidence. Neither can such unrecognized proof be assigned any evidentiary weight and value. **It must be stressed that there is a significant distinction between identification of documentary evidence and its formal offer. The former is done in the course of the pre-trial, and trial is accompanied by the marking of the evidence as an exhibit; while the latter is done only when the party rests its case. The mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence.** It must be emphasized that any evidence which a party desires to submit for the consideration of the court must formally be offered by the party; otherwise, it is excluded and rejected.¹⁰

11. Further, even as the exhibits were formally offered, their inclusion or non-inclusion as part of the documentary evidence of a party is still subject to the technical rules of

⁸ Emphasis supplied.

⁹ G.R. No. 182805, 22 April 2015.

¹⁰ Emphasis supplied.

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admissibility. The rule is that evidence formally offered by a party may be admitted or excluded by the court.¹¹

12. Therefore, there is thus no reversible error committed by this Honorable Court in not admitting Marcopper's Exhibits "13" to "21" as these were not mentioned in its Pre-Trial Brief and were neither marked nor specifically reserved during the Pre-Trial proceedings as reflected in the Pre-Trial Order, in blatant violation of the Rules governing pre-trial.

PRAYER

WHEREFORE, premises considered, it is respectfully prayed of this Honorable Court that the defendant Marcopper's Motion for Reconsideration (Re: Resolution dated June 30, 2022) dated 26 July 2022 be **DENIED** for utter lack of merit.

Plaintiff further prays for other forms of relief, just and equitable under the premises.

City of Makati for Boac, Marinduque. 22 August 2022.

MENARDO I. GUEVARRA

Solicitor General

Roll of Attorney No. 33957

IBP No. 177214, 07 February 2022

MCLE Exemption No. VII-EXD000076

13 August 2019

¹¹ *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*, G.R. No. 192024, 01 July 2015.

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GILBERT U. MEDRANO

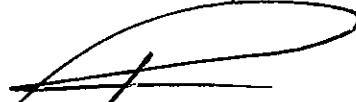
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18 February 2022



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**THE REGISTER OF DEEDS OF
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EXPLANATION

The foregoing **Opposition** is being filed and served by registered mail, and through electronic means wherever applicable, due to distance and lack of messenger to effect personal service.



PHILANDER L. TURQUEZA
State Solicitor I

GUM/PLT/svld/18-011191