



Republic of the Philippines  
**OFFICE OF THE SOLICITOR GENERAL**

(STRICTLY CONFIDENTIAL)  
18 March 2022

**LORMELYN E. CLAUDIO, CESO IV**

*OIC, Regional Executive Director*

Department of Environment and Natural Resources (DENR)

MIMAROPA Regional Office No. IV-B

1515, L&S Building,

Roxas Boulevard, Ermita, Manila

Attention: **Atty. Gandhi G. Flores**

*Chief, Legal Division*

Dear *OIC RED Claudio*:

We trust that you are well and in good health.

This concerns the intended filing of the Complaint (for Unlawful Detainer and Payment of Sum of Money with Prayer for Preliminary Mandatory Injunction) against Marcopper Mining Corporation ("MMC") regarding its continued unlawful possession over the 17.655 hectares of public forest land, located at Brgy. Balogo, Sta. Cruz, Marinduque, it leased from the Republic of the Philippines, through the DENR, under an Other Lawful Purpose Lease Agreement (OLPLA). As part of the case build-up, may we respectfully request your assistance in securing the following vital information and/or documents:

*First*, may we have certified or authenticated copies of the following:

Annex "A"	OLPLA No. 2 executed and signed on 06 August 1969
Annex "B"	Letter-application for the renewal of permit/lease with the DENR-Forest Management Bureau dated 13 August 1993
Annex "C"	Unsigned renewed OLPLA No. 2
Annex "D"	Land Classification Map No. 789

Annex "E"	Memorandum dated 15 April 1997
Annex "F"	Memorandum dated 11 March 1998
Annex "G"	DENR Administrative Order No. 2020-09
Annex "H"	Notice to Vacate dated 06 August 2021
Annex "I"	Memorandum dated 12 August 2021
Annex "J"	Letter-Reply of Atty. Chua dated 24 August 2021
Annex "K"	Report prepared by the Technical Team
Annex "L"	Regional Order No. 387, Series of 2021
Annex "M"	Letter issued by Maria Lourdes G. Ferrer, CESO III, Regional Executive Director (MIMAROPA) dated 28 September 2021

*Second*, we refer to the Letter dated 21 June 2000<sup>1</sup> from Director Al Rashid Ishmael of the Forest Management Bureau (FMB) addressed to MMC's Corporate Secretary Mr. Alberto O. Cuarteron. Among others, the said letter informed MMC of its arrears amounting to Php2,362,983.22 and further advised that early settlement with said office be made. Concomitantly with the need to demand unpaid rentals and arrears from MMC, may we request a full and updated computation of the said amounts covering the year 2001 up to present. This information is crucial to support the second cause of action in the proposed complaint.

*Third*, may we also seek your assistance in obtaining any information or data if MMC is committing violation/s of environmental law/s or any action/s that may cause degradation to the vacated site.

*Fourth*, we are furnishing your good office a copy of the draft Complaint so that you may provide or suggest any inputs before we finalize the same. Also of particular importance to us is any information as regards forthcoming infrastructure project at the Port of Balogo to be funded by the Government. At the same time, may we seek confirmation if you will sign and verify said Complaint; and if otherwise, who from DENR will sign the same.

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<sup>1</sup> A copy of the letter is herein attached as Annex "A".

*Finally*, may we refer to your office the letter of Marinduque Governor Presbitero J. Velasco, Jr. dated 21 February 2022<sup>2</sup> where the province expresses its intent to "appl[y] for the lease [of] the lots in Brgy. Balogo, Sta. Cruz, Marinduque."

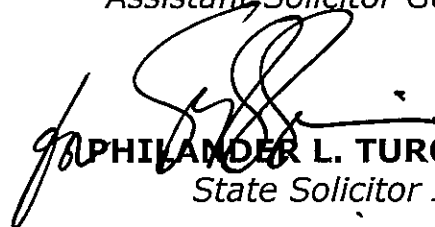
Thank you very much.

Very truly yours,

**JOSE C. CALIDA**  
*Solicitor General*

By:

  
**GILBERT U. MEDRANO**  
*Assistant Solicitor General*

  
**PHILANDER L. TURQUEZA**  
*State Solicitor I*

  
**RIGEL C. BAJANDE**  
*Associate Solicitor I*

  
**INGRID MARGARET M. SERRANO**  
*Associate Solicitor I*

Copy Furnished:

**JIM O. SAMPULNA**  
*Acting Secretary*  
DENR Central Office  
Visayas Ave., Diliman,  
Quezon City

<sup>2</sup> A copy of the letter is herein attached as Annex "B".

**IMELDA M. DIAZ**

*OIC*, PENR Officer

PENRO MARINDUQUE

Capitol Compound, Boac,  
Marinduque

**ANNEX A**

**ACTION SHEET**

STAMP OVER ORIGINAL COPY

INITIAL DATE

Division Chief *[Signature]* *6/27*

Asst. Division Chief *[Signature]* *6/27*

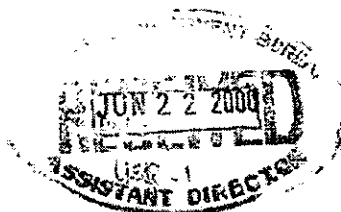
*120*

*500*

*7257-132*

21 June 2000

**MR. ALBERTO O. CUARTERON**  
 Asst. Corporate Secretary  
 MARCOPPER Mining Corp.  
 Andrews Avenue, corner  
 Tramo Street, Pasay City



Sir:

This is to acknowledge receipt of your letter dated 15 May 2000, informing this Office of the new address of your company and to inform you of the present arrears of your company covering an area of 17, 655 ha. under Other Lawful Purposes (Bodega and Port Facilities), amounting to Two Million Three Hundred Sixty Two Thousand Nine Hundred Eighty Three Pesos & 22/100 (P 2,362,983.22) as itemized below:

Rental CY 1998	454,419.85
100% surcharge	454,419.85
Rental CY 1999	454,419.85
100% surcharge	454,419.85
Rental CY 2000	454,419.85
20% surcharge	90,883.97

**TOTAL 2,362,983.22**

Early settlement with this Office of the above amount will be highly appreciated.

Very truly yours,

**AL RASHID ISHMAEL, al-Hadj.**  
 Director

d36-cuarteron  
 rbc(248)06-07-00

**ANNEX " B "**



Republic of the Philippines  
Province of Marinduque  
BOAC

**Office of the Governor**

February 21, 2022

**HON. JOSE C. CALIDA**  
SOLICITOR GENERAL  
Office of the Solicitor General Bldg.  
134 Amorsolo St., Legaspi Village  
Makati City 1229 Philippines

**SUBJECT: FILING OF RECOVERY OF POSSESSION BALOGO LOTS**

*Dear Solicitor General Calida,*

The Provincial Government of Marinduque applies for the lease the lots in Brgy. Balogo, Sta. Cruz, Marinduque. These lots were previously leased by the State through the DENR under Other Lawful Purpose Lease Agreement to Marcopper Mining Corporation. It was used by Marcopper Mining Corporation as Bodega, Housing and Port Facilities during their mining operations. The lease expired last December 30, 2020 and the DENR PENRO Marinduque served a Notice to Vacate last August 9, 2021

Despite the expiration of the lease and the service of Notice to Vacate, Marcopper Mining Corporation refused to vacate Balogo Port Facilities and Lots.

Under the General Appropriations Act of 2022, a budget for the Rehabilitation and Improvement of the said Balogo Port Facilities was approved for implementation. Therefore, it is urgent that the DENR PENRO Marinduque obtain the possession of the said facilities to implement the project. They seek the assistance of the Provincial Government but we cannot file the case in court since the DENR is a national government agency under your jurisdiction.

We helped them draft the complaint and the Judicial Affidavits to aid in the prompt and speedy filing of the case against Marcopper Mining Corporation. In this regard, we seek your assistance to file the case immediately.

For your reference are the draft Complaint, Judicial Affidavits and documentary exhibits.

Anticipating your usual prompt assistance and favorable action.

Yours truly,

**PRESBITERO J. VELASCO, JR.**  
Provincial Governor

REPUBLIC OF THE PHILIPPINES  
FOURTH JUDICIAL REGION  
**MUNICIPAL TRIAL COURT**  
Santa Cruz, Marinduque

**DEPARTMENT OF  
ENVIRONMENT AND  
NATURAL RESOURCES  
(DENR) -MIMAROPA  
REGION, represented by  
OIC-Regional Executive  
Director LORMELYN E.  
CLAUDIO,**

*Plaintiff,*

-VS-

Civil Case No. \_\_\_\_\_  
For: Unlawful Detainer, and  
Payment of Sum of Money  
with Prayer for Preliminary  
Mandatory Injunction

**MARCOPPER MINING  
CORPORATION,**  
*Defendant.*

X - - - - -X

## **COMPLAINT**

Plaintiff, Department of Environment and Natural Resources (DENR) – MIMAROPA REGION, represented by Regional Executive Director (RED) Lormelyn E. Claudio through the Office of the Solicitor General (OSG), unto this Honorable Court, most respectfully states:

### **PARTIES**

1. Plaintiff **Department of Environment and Natural Resources (DENR) – MIMAROPA REGION** is a

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juridical entity and a department in the executive branch tasked with the protection and conservation of the environment, the enforcement of environmental laws, and the disposition or lease of forest lands in accordance with the law. The DENR, as part of the national government and the an instrumentality of the Republic of the Philippines acts through its local offices that include the Provincial Environment and Natural Resources Offices (PENRO) for the province of Marinduque. The DENR-PENRO is represented herein by its Officer-in-Charge (OIC) PENR Officer Imelda M. Diaz (OIC-PENRO Diaz), with office address at Capitol Compound, Brgy. Bangbangalon, Boac, Marinduque. Plaintiff may be served with notices, judicial processes and papers through the Office of the Solicitor General (OSG) at 134 Amorsolo St., Legaspi Village, Makati City. Plaintiff, being an agency of the Republic of the Philippines, is exempt from paying the filing fees pursuant to Sec. 22, Rule 141 of the Rules of Court.

2. Defendant **Marcopper Mining Corporation** (MMC) is a corporation existing under the laws of the Republic of the Philippines, represented by its President and CEO, Mr. John E. Loney, with principal office address at Andrews Avenue, General Aviation, Domestic Airport, Pasay City, Metro Manila, Philippines. Defendant may be served with summons, notices judicial processes and other papers at its given office address and its counsel, Chua Lim and Associates, with address at Unit 304, 3<sup>rd</sup> Floor, The Oriental Square Bldg., F. Ortigas Jr. Road, Ortigas Center, Pasig City.

**AVERMENTS IN SUPPORT OF THE  
COMPLAINT**

A. Re: Unlawful Detainer

3. Pursuant to prevailing laws and rules, the DENR may grant or enter into tenurial instruments where lease



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and/or other similar privileges may be enjoyed by other parties or entities. For example, Section 57 of Presidential Decree (P.D.) No. 705, otherwise known as the Revised Forestry Reform Code of the Philippines, provides that:

Sec. 57. Other special uses of forest lands. Forest lands may be leased for a period not exceeding twenty-five (25) years, renewable upon the expiration thereof for a similar period, or held under permit, for the establishment of sawmills, lumber yards, timber depots, logging camps, rights-of-way, or for the construction of sanatoria, bathing establishments, camps, salt works, or other beneficial purposes which do not in any way impair the forest resources therein.

4. In accordance with the abovementioned provision, the DENR Secretary, on behalf of the Republic of the Philippines as the owner of all public lands, entered into a lease agreement, particularly designated as "Other Lawful Purpose Lease Agreement" (OLPLA),<sup>1</sup> with MMC, covering an area of 17.655 hectares of public land situated at Brgy. Balogo, Sta. Cruz, Marinduque (subject land). The OLPA was executed and signed on 06 August 1969 with a lease period of twenty five (25) years. This lease expired on 30 June 1994.

5. Sometime in 1993 or before the expiration of the lease, MMC filed an application for the renewal of the lease agreement by filing for an application for renewal of permit/lease with the DENR-Forest Management Bureau on 31 August 1993.<sup>2</sup> However, there are no records showing whether or not the same was approved.

6. On 14 September 1995, Other Lawful Purpose Lease Agreement – Forest Management Bureau (FMB) No.

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<sup>1</sup> A copy of the this 1969 OPLA is attached and made integral part hereof as Annex "A".

<sup>2</sup> A copy of the letter-application dated 13 August 1993 is attached and made integral part hereof as Annex "B".

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2 (OLPLA No. 2)<sup>3</sup> allegedly came into existence allowing the privilege to use by MMC over the same subject land covered by the first lease with the same area 17.655 hectares of public land for other lawful purposes – “Bodega” and “Port Facilities” – for a period of 25 years. This renewed lease which was neither approved nor signed by any DENR official purportedly expired on 31 December 2020.

7. The area leased in both OLPLAs located in Brgy. Balogo, Sta. Cruz, Marinduque is a Public Forest Land as duly stipulated and agreed upon by both the plaintiff and the defendant, thus:

The area leased herein is a public forest land to the best knowledge and belief of the parties herein and accordingly, the Party of the First Part shall not be responsible for any loss suffered by the Party of the Second Part in case the land is declared private property of another or otherwise reduced, modified, amended or cancelled as a result of prior and existing valid private claims or interest therein;

8. The status that the subject property is Public Forest Land is pursuant to Land Classification (LC) Map 789 declaring that the subject lot falls within Timber Land Block B, Project No. 5.<sup>4</sup>

9. Despite the existence of the aforementioned OLPLA No. 2, FMB Director Jose D. Malvas Jr. mentioned, in a Memorandum dated 15 April 1997,<sup>5</sup> that OLPLA No. 2 was forwarded to the Office of then DENR Secretary Victor O. Ramos for the latter’s approval as stated under Memorandum dated 16 January 1996. However, under

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<sup>3</sup> A copy of the unsigned renewed OLPLA is herein attached and made integral part hereof as Annex “C”.

<sup>4</sup> A copy of LC Map 789 is herein attached and made integral part hereof as Annex “D”.

<sup>5</sup> A copy of the Memorandum dated 15 April 1997 is attached and made integral part hereof as Annex “E”.

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Memorandum dated 11 March 1998,<sup>6</sup> it was mentioned therein that there is no record of any approval for the renewal of the said lease agreement.

10. In the same Memorandum dated 11 March 1998, it was also mentioned therein that MMC, as the lessee, continued its occupation over the area despite an expired lease agreement pending the application for renewal.

11. During the existence and life of the lease agreements, *albeit* without proof of approval over the second OLPLA, defendant MMC enjoyed possession and occupation of the subject lot classified as Public Forest Land. MMC still continued to possess and occupy the same despite the lapse and non-renewal of their lease agreement with the DENR. Assuming *arguendo* that the contract was actually renewed, the same had already expired last 31 December 2020.

12. Section XV of the lease agreement stipulates that upon the expiration or cancellation of the lease, the lessee may, at the discretion of the Director of FMB or the Secretary of DENR, be allowed to hold the land for a period not exceeding ninety (90) days only for the purpose of removing temporary improvements and reverting the land to its original conditions. However, MMC still continues to hold and occupy the parcel of land despite the expiration of the lease agreement and grace period previously agreed upon.

13. Due to the continuous possession and occupation by defendant MMC despite expiry of the lease, the DENR, acting through the PENRO, was constrained to assert its ownership and possession of the subject property pursuant to DENR Administrative Order No. 2020-09 (DAO No. 2020-09) or the Guidelines on the Management of

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<sup>6</sup> A copy of Memorandum dated 11 March 1998 ~~is~~ herein attached and made integral part hereof as Annex "F".

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Cancelled or Terminated, Expiring, and Expired Tenurial Instrument.<sup>7</sup>

14. Section 5 of DAO No. 2020-09 provides that an Asset Management Team shall be created at each PENRO/Implementing PENRO, DENR-National Capital Region (NCR), and at the Mines and Geo-Sciences Bureau (MGB) Regional Offices to ensure proper management and monitoring of assets on the ground. It shall be headed by the PENRO in the case of PENR Offices. It also states the functions of the AMT, to wit:

5.1. Inventory and appraisal of all the improvement and possible damages within the area;

5.2. Initiate take-over of the area/s and improvements covered by cancelled or terminated, and expired tenurial instruments by putting up signage/s stating that it is a DENR property, and conducting related activities with the end in view of securing the area.

15. Pursuant to the provisions of DAO No. 2020-09, PENRO Marinduque, headed by OIC-PENRO Diaz, together with the representatives from the Provincial Government of Marinduque and from the Philippine National Police (PNP)-Marinduque, personally served, on 09 August 2021, a Notice to Vacate<sup>8</sup> to MMC dated 06 August 2021. The same was duly received by Mr. Jessie Nacion, security guard on duty, and subsequently affirmed by MMC's counsel of record Atty. Clifford Chua who replied to the said letter.<sup>9</sup>

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<sup>7</sup> A copy of the DENR Administrative Order No. 2020-09 is herein attached and made integral part hereof as Annex "G".

<sup>8</sup> A copy of the Notice to Vacate dated 06 August 2021 is herein attached and made integral part hereof as Annex "H".

<sup>9</sup> A copy of the Memorandum dated 12 August 2021, with the attached Notice to Vacate dated 06 August 2021 with sign of receipt, pictures during the service of the letter and putting up of signage and the Letter-Reply of Atty. Chua is hereto attached as Annex "I", and submarkings, and Annex "J", respectively is attached and made integral part hereof.

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16. On 11 August 2021, a technical team conducted a survey covering Lot Nos. 5143 & 5836, Cad 815-D, Sta.Cruz Cadastre located in Brgy. Balogo in order to verify the identity of the lot leased to MMC.<sup>10</sup>

17. The authority of OIC-PENRO Diaz was confirmed by Regional Special Order No. 387,<sup>11</sup> Series of 2021 and further affirmed by the Letter dated 27 September 2021<sup>12</sup> issued by Maria Lourdes G. Ferrer, CESO III, Regional Executive Director (MIMAROPA).

18. However, despite the service of Notice to Vacate the premises and despite actual knowledge by MMC and its counsel of record, MMC, up to this date, still continues to enjoy the unauthorized possession and occupation of the subject property. Hence, the filing of this complaint for unlawful detainer.

19. The instant complaint is filed within the one (1) year prescriptive period counted from the last demand letter sent to MMC on 09 August 2021. The latter's right to possess and occupy the subject land was lawful from the beginning but became illegal upon the lapse or expiration of the lease agreement between the parties. The purportedly renewed contract of lease expired on 31 December 2020.

20. The first cause of action pertains to unlawful detainer. Plaintiff's cause of action is based on the Republic of the Philippines' ownership over all public land and defendant's unlawful occupation and unlawful possession of plaintiff's property due to the expiration of their right to possess the same. Notice to Vacate was duly served upon MMC to vacate the property but to no avail. Hence, plaintiff was prompted to seek the help of the Honorable Court and file this action for unlawful detainer.

<sup>10</sup> A copy of the Report prepared by the Technical Team is hereto attached and made integral part hereof as Annex "K".

<sup>11</sup> A copy of Regional Order No. 387 is hereto attached and made integral part hereof as Annex "L".

<sup>12</sup> A copy of the Letter dated September 27, 2021 is hereto attached and made integral part hereof as Annex "M".

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21. At the onset, an unlawful detainer is an action to recover possession of real property from one who unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied. **The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess.** The only issue to be resolved in an unlawful detainer case is the physical or material possession of the property involved, independent of any claim of ownership by any of the parties.<sup>13</sup>

22. In the case of *Romullo vs. Samahang Magkakapitbahay ng Bayanihan Compound Homeowners Association*,<sup>14</sup> the Supreme Court ruled that a complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following:

- a. initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff;
- b. eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;
- c. thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and
- d. within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.

23. All the foregoing requisites are present.

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<sup>13</sup> *Piedad v. Gurieza*, G.R. No. 207525, 18 June 2014, emphasis supplied.

<sup>14</sup> G.R. No. 180687, 06 October 2010.

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24. *First*, MMC's possession of the subject land was lawful from the start by virtue of a contract – the OLPLA lease agreement. Even an implied renewal was made though not supported by the records.

25. *Second*, MMC's possession of the subject land, however, became illegal upon service of the Notice to Vacate dated 06 August 2021. Upon notice to MMC that the latter's right to possess the subject land under the OLPLA has already expired, MMC no longer had the legal right to possess and occupy the subject land.

26. *Third*, after service of notice to vacate to MMC, the latter remained in possession of the subject land and deprived the DENR possession and enjoyment thereof.

27. *Fourth*, the DENR has filed this complaint for unlawful detainer in order to assert its legal right to possess the subject land within one year from the issuance of the notice to vacate or from 09 August 2021.

28. In this case, it is clear that the DENR, in behalf of the Republic of the Philippines is the rightful owner of the subject parcel of land and has better right against MMC. As provided in the previous OLPLA entered into between the parties, it is clear that the subject property is a public land and only leased to defendant MMC for a certain period.

29. The OLPLA has a duration of 25 years and has expired on June 30, 1994. MMC argued, however, that the said OLPLA has been renewed and approved by the then Department of Agrarian Reform. However, there is no proof to support such claim. Assuming *arguendo* that the lease agreement was purportedly renewed, the possession and occupation of MMC up to the present has become unlawful and illegal since the expiration of the purportedly

renewed contract to lease was on 31 December 2020. The basis of MMC’s right of possession over the subject land has already lapsed.

30. However, despite notice and demand to vacate made by DENR, MMC refused to heed the same. Hence, the filing of this case for unlawful detainer.

B. Re: Payment of Rentals

31. Plaintiff respectfully repleads herein all the foregoing paragraphs by reference.

32. With the obstinate refusal of defendant to vacate the premises and peaceably turn over their possession to the DENR, the latter has been deprived of the fruits and income of the subject property.

33. Defendant has continued to occupy the leased premises without paying a single centavo as rent despite the demand made by the DENR. As early as 1998, defendant failed to pay rental fees. Between the periods of 1998 and 2000, a Demand Letter dated 21 June 2000 was sent to defendant for the payment of rentals and surcharges in the amount of PhP2,362,983.22.

34. The demand letter was left unheeded and defendant continues not to pay at present time resulting to unpaid rental and surcharge amounting to: **TWO HUNDRED SIXTY FIVE THOUSAND SEVENTY EIGHT and 24/100 PESOS** (PhP265,078.24), broken down as follows:

Rate per month	Period	Rental Payments Due
PhP37,868.32	August 9, 2021 to September 8, 2021	PhP37,868.32



Php37,868.32	September 9, 2021 to October 8, 2021	37,868.32
Php37,868.32	October 9, 2021 to November 8, 2021	37, 868.32
Php37,868.32	November 9, 2021 to December 8, 2021	Php37,868.32
Php37,868.32	December 9, 2021 to January 8, 2022	Php37,868.32
Php37,868.32	January 9, 2022 to February 8, 2022	Php37,868.32
Php37,868.32	February 9, 2022 to March 8, 2022	Php37,868.32
	<b>Total</b>	<b>Php265,078.24</b>

35. Defendant should thus be made liable for damages in the form of rent for the occupation of the leased premises from the time it has been occupying the subject property without paying for its rent.<sup>15</sup>

C. Re: Exemplary Damages

36. Plaintiff respectfully repleads, by reference, the foregoing allegations.

37. By refusing to heed plaintiff’s demands and by deliberately and flagrantly breaching its contractual obligations under the OLPLA, defendant, acting through its officers, directors, employees and representatives, has clearly acted in a wanton and malevolent manner.

38. By way of example and correction for the public good, defendant should be made to pay plaintiff DENR exemplary damages in the amount of at least Php10,000,000.00.

**AVERMENTS IN SUPPORT OF THE PRAYER  
FOR THE ISSUANCE OF PRELIMINARY  
MANDATORY INJUNCTION**

<sup>15</sup> Muller v. Philippine National Bank, G.R. No. 215922, 01 October 2018.

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39. Plaintiff repleads therein by reference all the foregoing allegations, and in addition, states that:

40. Plaintiff is seeking to avail of the provisional remedy of Preliminary Mandatory Injunction in order to prevent substantial invasion of plaintiff's right over the subject property and to prevent any irreparable injury thereby.

41. Plaintiff prays that this Honorable Court issue a preliminary mandatory injunction order, enjoining the Defendant to surrender the possession of the premises and restore the Plaintiff in possession thereof.

42. Article 539 of the NCC,<sup>16</sup> allows a possessor deprived of possession to secure from the competent court a writ of preliminary mandatory injunction to restore him in his possession. In addition, Section 15, Rule 70 on Forcible Entry and Unlawful Detainer reads:

Sec. 15. Preliminary Injunction. — The court may grant preliminary injunction, in accordance with the provisions of Rule 58 hereof, to prevent the defendant from committing further acts of dispossession against the plaintiff.

**A possessor deprived of his possession through forcible entry or unlawful detainer may, within five (5) days from the filing of the complaint, present a motion in the action for forcible entry or unlawful detainer for the issuance**

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<sup>16</sup> ART 539. Every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court.

A possessor deprived of his possession through forcible entry may within ten days from the filing of the complaint present a motion to secure from the competent court, in the action for forcible entry, a writ of preliminary mandatory injunction to restore him in his possession. The court shall decide the motion within thirty (30) days from the filing thereof.

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**of a writ  
of preliminary mandatory injunction to  
restore him in his possession.** The court shall  
decide the motion within thirty (30) days from  
the filing thereof.<sup>17</sup>

43. In the case of *Sps. Dela Rosa v. Heirs of Juan Valdez*,<sup>18</sup> the Supreme Court enumerated the requisites for the issuance of a preliminary mandatory injunction, thus:

a. That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

b. That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

c. That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

44. Here, all the requisites for the issuance of the preliminary mandatory injunction are present.

45. In the case of *Cagayan de Oro City Landless Residents Association Inc. v. CA*,<sup>19</sup> the Supreme Court likewise ruled that the provisional remedy of mandatory preliminary injunction can be availed of in an ejectment case stating, thus:

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<sup>17</sup> Emphasis supplied.

<sup>18</sup> G.R. No. 159101, 27 July 2011.

<sup>19</sup> G.R. No. 106043, 04 March 1996

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**Although as a general rule, a court should not by means of a preliminary injunction, transfer property in litigation from the possession of one party to another, this rule admits of some exceptions. For example, when there is a clear finding of ownership and possession of the land or unless the subject property is covered by a torrens title pointing to one of the parties as the undisputed owner. In the case at bench, the land subject of the suit is covered by a torrens title under the name of NHA.<sup>20</sup>**

46. It must be emphasized that the applicant – DENR in this case – is entitled to the relief demanded considering that it is the rightful owner of the subject land the MMC is illegally holding and continued to possess despite the expiration of the lease and the receipt of the demand to vacate, to the serious damage and prejudice of the DENR. The relief that DENR seeks consists in recovering the possession of the land, from the unlawful possession of MMC, so it may enter into a lease agreement with the Province of Marinduque to realize immediate economic gains for the benefit of DENR.

47. Significantly, the act of MMC in continuing to stay in the subject land and possess the same violates the right of the DENR to possess the same in the concept of an owner and enjoy the fruits thereof.

48. Notably, the Provincial Government of Marinduque expressed its intent to assume the lease of Balogo Port under a new OLPLA from MMC in order to utilize the warehouse and port area therein for the development and progress of the Province of Marinduque.

49. Since MMC's right over the subject land has already expired and its operation has already ceased, the

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<sup>20</sup> Emphasis supplied.

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DENR is planning to put the property into good use and collect the necessary lease payment over the use of the subject property.

50. Furthermore, contracting a lease agreement with the Province of Marinduque will aid in its recovery and development, especially in its economy and tourism, which was badly affected by the Covid-19 Pandemic.

51. The Province of Marinduque has several plans, projects and activities lined up for the development of the Province but such projects cannot be accomplished without proper site and location. The assumption of the lease agreement over the Balogo Port and Warehouse will accelerate the completion and realization of the projects lined up by the Provincial Government.

52. Conversely, despite the notice and demand to vacate sent to MMC, the latter still failed and refused to vacate the property leased to it. Its continuous occupation of the property and refusal to vacate despite the lapse and expiration of its right to occupy the same constitutes a violation to the rights of herein Plaintiff as owner and administrator of the subject property. Violation of such right is continuously causing irreparable injury to the Plaintiff since the continuous occupation by MMC over the subject land hampers the acquisition of financial gain by the DENR, as well as the immediate development and recuperation of the economy of the Province.

53. Clearly, unless defendant MMC is forthwith restrained, plaintiff will suffer grave and irreparable injury from the continued acts of MMC in further possessing the subject property without any legal right to possess the same to the serious damage and prejudice of plaintiff.

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54. Damages are irreparable within the meaning of the rule relative to the issuance of injunction where there is no standard by which their amount can be measured with reasonable accuracy . "An irreparable injury which a court of equity will enjoin includes that degree of wrong of a repeated and continuing kind which produce hurt, inconvenience, or damage that can be estimated only by conjecture, and not by any accurate standard of measurement." An irreparable injury to authorize an injunction consists of a serious charge of, or is destructive to, the property it affects, either physically or in the character in which it has been held and enjoined, or when the property has some peculiar quality or use, so that its pecuniary value will not fairly recompense the owner of the loss thereof.<sup>21</sup>

### TESTIMONIAL EVIDENCE

55. In compliance with Section 6, Rule 7 of the Amended Rules of Civil Procedure, hereunder are the plaintiff's witnesses and the summary of their respective testimonies, to wit:

- a. **PENRO Imelda M. Diaz** will testify that: (1) she is the Officer-In-Charge of the Provincial Environment and Natural Resources Office-Marinduque; (2) the application for renewal by MMC was not signed by then Secretary Victor O. Ramos hence the OLPLA between the DENR and MMC was not renewed; (3) a notice to vacate was served upon MMC through its security guard in Balogo Port and; (4) despite notice, MMC did not vacate the subject premises and continued to possess the same.

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<sup>21</sup> *Heirs of Melencio Yu et al. v. Court of Appeals*, G.R. No. 182371, 04 September 2013.

- b. **Engr. Anita Iringan** will testify that: (1) She is the Team Leader (Engineer III) and Assistant Regional Director for Technical Services DENR MIMAROPA Region; (2) she conducted a verification of the boundaries and land classification status of Lot No. 5143, Lot No. 5836, and CAD 815-D located in Barangay Balogo, Sta.cruz and; (3) the subject lots falls within timberland.
  
- c. **Hon. Presbitero J. Velasco, Jr.** will testify that: (1) that he is the incumbent Provincial Governor of the Province of Marinduque; (2) that the Provincial Government of Marinduque intends to repair/rehabilitate the Balogo Port, convert the same into an international port, cold storage facility and, make it a Special Economic Zone; (3) That there is already a P300,000,000.00 budget allocated in the General Appropriations Act of 2022 and; (4) That the Department of Environment and Natural Resources agreed to lease the aforementioned property to the Provincial Government of Marinduque.

**DOCUMENTARY EVIDENCE AND OBJECT EVIDENCE**

56. In compliance with Section 6, Rule 7 of the Amended Rules of Civil Procedure, the plaintiff intends to present the following documentary and object evidence to prove the allegations contained herein, to wit:

Annex "A"	A copy of OLPLA No. 2 dated August 6, 1989
Annex "B"	A copy of MMC's Letter-Application dated August 3, 1993
Annex "C"	A copy of the Memorandum dated April 15, 1997

Annex "D"	A copy of the Memorandum dated March 11, 1998
Annex "E"	A copy of DENR Administrative Order 2020-09
Annex "F"	A copy of Memorandum dated August 12, 2021
Annex "G"	A copy of the Letter-Response dated August 24, 2021
Annex "H"	A copy of the Report of Survey
Annex "I"	A copy of Regional Order No. 387
Annex "J"	A copy of the Letter dated September 27, 2021
Annex "K to K-3"	Copies of pictures when the Notice to Vacate was served
Annex "L"	Copies of pictures when the survey was conducted
Annex "M"	A copy of the General Appropriations Act of 2022
Annex "N"	A copy of the Letter dated January 6, 2022
Annex "O"	A copy of the Letter dated October 13, 2021

**PRAYER**

**WHEREFORE**, premises considered, plaintiff most respectfully prays of this Honorable Court that:

1. After due proceedings, a **Writ of Preliminary Mandatory Injunction BE ISSUED** enjoining defendant Marcopper Mining Corporation to cease and desist in occupying the subject property in order to prevent substantial invasion of plaintiff's right over the subject property and to prevent any irreparable injury to it;
2. After due proceedings, judgment be rendered ordering defendant Marcopper Mining Corporation and all persons found therein or occupying the same property to **VACATE** and **REMOVE** temporary improvements and other movable properties over the subject lot; and



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3. On the second cause of action, **PAY** the plaintiff a sum in the form of rents or reasonable use/occupation of the property commencing from the time defendant Marcopper Mining Corporation refused to vacate the premises after it received a Notice to Vacate on August 9, 2021 until the time the plaintiff recovers possession thereof, at the rate of Php37,868.32 per month.

4. On the third cause of action, **ORDER** the defendant to pay plaintiff the sum of ONE HUNDRED THOUSAND PESOS (Php100,000.00) by way of exemplary damages.

Plaintiff prays for such other reliefs and remedies as may be deemed just and equitable under the premises.

Makati City for Santa Cruz, Marinduque. March 18, 2022.

**JOSE C. CALIDA**

*Solicitor General*

Roll of Attorney No. 24852

IBP Lifetime No. 015360, 18 August 2016

MCLE Exemption No. VII-OSG000228

08 November 2019

**GILBERT U. MEDRANO**

*Assistant Solicitor General*

Roll of Attorney No. 47392

IBP Lifetime No. 03598

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MCLE Exemption No. VII-OSG003356  
18 February 2022

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27 May 2021

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December 2021

Admitted to the Bar on 18 June 2019

MCLE Compliance<sup>22</sup>

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IBP No. 201315 / 02.03.22

MCLE Compliance No. VI-

0022122/04.15.2019

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<sup>22</sup> Admitted to the Philippine Bar on June 18, 2019, hence, compliance with MCLE requirement is not yet due until the year 2022 pursuant to Rule 2, Section 2 of Bar Matter No. 850.

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Email: [docket@osg.gov.ph](mailto:docket@osg.gov.ph)

*GUM/PLT/RCB/IMMS/svld/18-011191*

**VERIFICATION AND CERTIFICATION**  
**ON NON-FORUM SHOPPING**

I, **LORMELYN E. CLAUDIO**, in my official capacity as the OIC- Regional Executive Director of the Department of Environment and Natural Resources (DENR), MIMAROPA Region, of legal age, Filipino, after having been duly sworn to in accordance with law, hereby depose and state that:

1. I have caused the preparation and filing of the foregoing Complaint;

2. I have read and understood the contents thereof; the allegations therein are true and correct of my own personal knowledge and based on authentic records; and the factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery;

3. I have authorized the filing of this action;

4. The foregoing pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

5. I have not commenced any other action or proceeding involving the same issues and parties in the Supreme Court of different divisions thereof, or the Court of Appeals, or any other tribunal or agency; and

6. I undertake to notify the Honorable Court within five (5) days from notice should I learn that similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency.

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**IN WITNESS WHEREOF**, I have hereunto affixed my signature this \_\_\_\_\_ day of \_\_\_\_\_, 2022, at Manila, Philippines.

**LORMELYN E. CLAUDIO**

*Affiant*

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_ 2022 at Manila, Philippines, the affiant exhibit to me her Government issued \_\_\_\_\_ Identification Card No. \_\_\_\_\_ issued by \_\_\_\_\_.

Notary Public/Subscribing Officer

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Book No. \_\_\_\_\_;  
Series of 2022.