

Republic of the Philippines
REGIONAL TRIAL COURT
Fourth Judicial Region
Branch 163, Coron, Palawan

**BCT TRADING AND
CONSTRUCTION, AND 428 HI-
TECH GROUP, INC.,**

Plaintiffs,

- versus -

Civil Case CRN-1084
For: Injunction & Damages

**ROBERTO B. MAGALLANES
AND JOSE B. MAGALLANES,
JR., ET AL.,**

Defendants.

X-----X

COMMENT/OPPOSITION

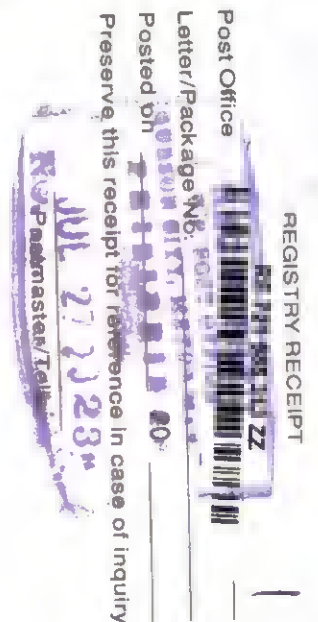
(to the Plaintiffs' 10 July 2023 Motion for Reconsideration)

Defendant, **PHILIPPINE RECLAMATION AUTHORITY**
(PRA), by counsel, respectfully states:

1. During the 17 July 2023 hearing held *via* videoconferencing, PRA prayed that it be allowed to file its Comment/Opposition to the 10 July 2023 Motion for Reconsideration (MR) of the 13 June 2023 Resolution of this Honorable Court within ten (10) days from said date. Thus, PRA has until 27 July 2023 to file this Comment/Opposition.

2. Plaintiffs' grounds for reconsideration, insofar as PRA is concerned, can be summarized as follows:

- (a) Plaintiffs, as joint venture partners of the Province of Palawan (Province), have a clear and unmistakable right over the reclaimed land;



- (b) PRA acknowledged the Plaintiffs as parties to the CJVA executed between them and the Province; and
- (c) The Forfeiture Order issued by PRA is yet to attain finality.

3. Considering that items (a) and (b) above are related insofar as the issue on whether Plaintiffs are real parties in interest and have a clear and unmistakable right to warrant the prayer for injunctive relief are concerned, they shall be discussed together below.

COUNTER-ARGUMENTS & DISCUSSION

I. THIS HONORABLE COURT CORRECTLY FOUND THAT PLAINTIFFS FAILED TO ESTABLISH "CLEAR AND UNMISTAKABLE RIGHT," AS ONE OF THE ESSENTIAL ELEMENTS WARRANTING INJUNCTIVE RELIEF

4. At the onset, it must be clarified that nowhere in PRA's submissions did it argue that Plaintiffs have no personality in the Contractual Joint Venture Agreement (CJVA) which they signed with the Province. There was no argument put forth by PRA denying the existence of the CJVA between Plaintiffs and the Province, what is being stressed by PRA is the undisputed fact that it is neither a party nor privy to the CJVA.

5. It seems that Plaintiffs confused the CJVA, which it signed with the Province, with the 5 November 2009 Memorandum of Agreement (MOA), which was signed between PRA and the Province, the latter being the basis of the Province's authority to reclaim.

6. With respect to the MOA, the following facts are undisputed:

- (a) Only PRA and the Province are signatories; Plaintiffs are not parties to the MOA.

- (b) The CJVA is only between Plaintiffs and the Province; the CJVA did not amend or revise the MOA.
- (c) The MOA is the source of the Province's authority to reclaim [subject to compliance with laws, rules and conditions].

7. Plaintiffs gave much ado about their rights and the existence of the CJVA when it was not the source of the Province's authority to reclaim, but the MOA itself. If there was any violation of Plaintiffs' rights arising from the CJVA, then Plaintiffs should properly enforce them against the Province only not PRA.

8. As presented by PRA in its Answer¹, "(T)he MOA is the basis of the authority that may be given by PRA to reclaim, and not the CJVA between the Province and the Plaintiffs. Since the Province is one of the contracting parties in the MOA, it is the proper party who may raise an issue on the validity of the forfeiture."

9. This fact did not escape this Honorable Court's attention when it correctly observed that the Province was not a party to this case, either as a plaintiff or defendant:

In fact, records reveal that the Provincial Government is not even impleaded as a party in this case. This non-inclusion thus raises doubts as to Plaintiff's clear and legal right over the reclaimed land considering that the Provincial Government is a Joint Venture partner.

As explained by the PRA, the Supreme Court in a catena of cases, has ruled that "the parties to a contract are the real parties in interest in an action upon it. The basic principle that relativity of contract provides that a contract is legally binding for the individuals who have agreed to it. A third person, even if they have knowledge of the contract and have acted accordingly, cannot benefit from, or be disadvantaged by it.

10. As stated in the MOA, the Province undertook to perform actions/submit documents prior to the issuance of the Notice to Proceed (NTP). Article IV, B.2 (3) of the MOA provides.

¹ Par. 46 of PRA's Answer.

3. Submit the following requirements within sixty (60) working days from effectivity of this Agreement, for review and approval by the PRA, as basis for the issuance of the **Notice to Proceed {NTP} for Reclamation Works**:

- a) Land-form plan with TECHNICAL DESCRIPTION of the metes and bounds of the same;
- b) Final Master Development and Land Use Plan for the Project;
- c) Detailed engineering design, plans and specification for reclamation works, reclamation plans and methodology, plans for sources of fill materials;
- d) Drainage plan vis-à-vis the land form approved by DPWH Regional Office to include a cost effective and efficient drainage system as may be required based on the results of the studies;
- e) Detailed Project Cost Estimates and Quantity take-off per items of work of the Rawland Reclamation components, e.g., reclamation, containment structures and soil consolidation;
- f) Organizational Chart of the construction arm, manning table, equipment schedule for the Project;
- g) Project timetable (PERT/CPM) for entire Project construction period.

11. As it happened, not all of these requirements were complied with by the Province. Since the Plaintiffs anchor their rights on the CJVA that it executed with the Province, any damage or injury to such rights should be properly directed against the Province, not PRA.

12. Therefore, one who is not a party to a contract, and for whose benefit it was not expressly made, cannot maintain an action on it. One cannot do so, even if the contract performed by the contracting parties would incidentally inure to one's benefit.²

13. If Plaintiffs allege that their "rights" over the reclaimed land were "violated" due to the forfeiture, then they should properly go after the other party to the CJVA—the Province—since it is the latter who is obligated under its MOA with the PRA to ensure that the requirements prior to a valid reclamation were complied with.

² Juana Vda. De Rojas, Vs. Marcelino Dime, GR 194548, 10 February 2016.

x-----x

14. In this case, Plaintiffs, not being parties to the MOA, are not privy to it. They are, thus, mere "strangers" to the MOA. Consequently, any breach of the MOA will not affect them. There can be no material interest to speak of on their part which can warrant them as the real parties in interest in this case.

15. The Honorable Court correctly cited the case of Hcn. Boncodin vs. NPC Consolidated Employees Union,³ where "clear legal right" was defined as one clearly founded in or granted by law or is 'enforceable as a matter of law.'

16. The authority to reclaim can be traced to the MOA executed between the PRA and the Province. Since Plaintiffs failed to establish the *first element*—"clear and unmistakable right"—to support their entitlement to an injunctive writ, being strangers to the MOA between PRA and the Province, they are not the real parties in interest in this case.

17. With respect to the other elements required prior to the issuance of the Writ of Preliminary Injunction (WPI), plaintiffs did not present any argument in the MR to support their presence in this case. All told, this Honorable Court was correct in denying issuance of the WPI in favor of Plaintiffs.

**II. PLAINTIFFS' "DUE
PROCESS RIGHTS," IF ANY,
WERE AFFORDED THEM
PRIOR TO THE ISSUANCE
OF THE FORFEITURE
ORDER.**

18. At this point, it cannot be stressed enough that any right to reclaim naturally emanates from the MOA, since the authority to reclaim is rooted in it.

³ GR 162716, 27 September 2006.

x-----x

19. Nevertheless, PRA asserts that it has not violated any due process rights, even assuming such exist in Plaintiffs' favor due to the CJVA.

20. As manifested in PRA's Position Paper and Answer, the requirements for the issuance of the NTP have been clear from the start, as it was expressly stated in the MOA itself. Likewise, after repeated requests for issuance of the NTP, PRA granted⁴ the Province's request for a conditional NTP and reminded the Province of the documentary requirements prior to its validity when it reiterated them several times in its letters⁵. Plaintiffs admit to knowing these conditions as they even made it appear that the lack of one of the documents, the Area Clearance, was beyond their control.

21. In particular PRA's 11 December 2019 letter⁶ was clear when it informed the Province of the conditional NTP, with the proviso that "Failure to comply with any of such requirements and conditions within the prescribed period as specified x x x shall cause PRA to move for the nullification" of the NTP. Thus, Plaintiffs knew from the start that any reclamation performed under the authority of the conditional NTP risked being declared "null or void" should the conditions remain unfulfilled. Since the reclamation is void, forfeiture is in order.

22. As a matter of fact, Plaintiffs and the Province knew from the start that any **actual** reclamation should first comply with PRA's conditions as stated in PRA Board Resolution 5078, Series of 2019. Paragraph A of the Resolution states:

A. Requirements prior to actual reclamation works:

- i. That the basis of project implementation shall be the final design for the above reclamation project by the Provincial Government of Palawan;
- ii. **That the Provincial Government of Palawan shall submit to PRA the final design not later than one hundred eighty (180) calendar days from the date of issuance of the NTP. Failure to comply within such period as required shall be a valid cause for PRA to move for nullification of the NTP and termination**

⁴ See Resolution No. 5078, Series of 2019 (Annex 8-PRA of Position Paper).

⁵ See Annex 6-PRA and Annex 9-PRA of PRA's Position Paper.

⁶ See Annex 8-PRA of PRA's Position Paper.

of the Memorandum of Agreement (MOA) by PRA as stipulated under Section VIII of the MOA;

- iii. That the PRA shall approve the final design and compliance with the conditions and/or requirements by the concerned government agencies including the DENR as enumerated in the pertinent ECC;
- iv. That the Provincial Government of Palawan shall submit the Final assessment of the following, namely:
 - a) the location of the respective land shares of the parties;
 - b) administrative and operational details;
 - c) project implementation management;
 - d) compliance with regulatory requirements by other government agencies vis-à-vis the final design.

(Emphasis supplied)

23. In spite of the lapse of the 180-day period and the extended 120-day period⁷, the Province and/or Plaintiffs failed to submit the requirements prior to reclamation, and instead proceeded with actual reclamation works. Worse, the continuous lockdowns due to the COVID-19 pandemic made it difficult for government agencies such as the PRA to monitor whether or not the Province and/or the Plaintiffs were actually complying with the directive to hold-off any reclamation until all requirements were complied with. Verily, the Plaintiffs have been made aware of the conditions in the NTP and the consequences for non-compliance. In fact, the reclaimed land in this case is the best proof that actual reclamation works were performed *sans* compliance with the requirements.

24. Furthermore, Plaintiffs already admitted that they received a copy of PRA's 23 February 2023 letter informing them of the Forfeiture Order approved by the PRA Board. From that time, Plaintiffs could have submitted the necessary documents being required of them, if there was no illegal reclamation to speak of, since the documents should have been secured **prior to any actual reclamation works** as provided in the conditional NTP. Unfortunately, this has not been done.

25. All told, considering that the conditions for the issuance of the NTP are clear and expressly provided in the MOA, the

⁷ See Annex 10-PRA of PRA's Position Paper.

requirement should have been complied with prior to any reclamation works. Further, the fact that a conditional NTP has been issued and requirements prior to actual reclamation works to proceed have been qualified, the Plaintiffs knew that any reclamation done prior to their compliance would cause the forfeiture of the reclaimed land in favor of the Government.

PRAYER

WHEREFORE, the PRA respectfully prays that this Honorable Court DENY the Motion for Reconsideration for lack of merit.

Other equitable measures of relief are likewise asked for.

Quezon City for Coron, Palawan, 24 July 2023.

OFFICE OF THE GOVERNMENT CORPORATE COUNSEL

Counsel for PRA

3rd Floor MWSS Admin. Building, Katipunan Road, Quezon City

Phone: +63(2)-7587-9803; Mobile: +63(917)-873-5522

records@ogcc.gov.ph

ROGELIO V. QUEVEDO

Government Corporate Counsel

Roll of Attorneys 31495

IBP Life Member Roll 4393; 01/29/2003; Bulacan

MCLE Compliance VII-0023846, 10/13/2022

By:



MARILYN G. ESTARIS

Deputy Government Corporate Counsel

Roll of Attorneys 42624

IBP Life Member Roll 6380; 1/10/07; Quezon City

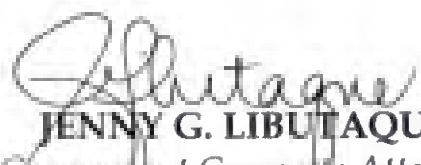
MCLE Exemption VII-OGCC 002853; 2/16/21


MA. DOLORES M. RIGONAN

Assistant Government Corporate Counsel
IBP Life Member Roll 06385; 11/08/08; Quezon City
Roll of Attorneys 36023
MCLE Exemption VII-OGCC002860, 2/16/21


MARIA SUSANA BORRAMEO-GARCIA

Government Corporate Attorney
Roll of Attorneys 36759
IBP Life Member Roll 703220; 1/10/07, Quezon City
MCLE Compliance VII-0004719, 11/12/21


JENNY G. LIBUTAGUE
Government Corporate Attorney
Roll of Attorneys 58594

IBP Life Member Roll 09032; 4/07/10; RSM
MCLE Compliance VII-0006098, 11/23/21

Copy furnished:

ALAMPAY AND TAMASE LAW OFFICE

Counsel for the Plaintiffs

12th Floor, PDCP Bank Centre cor.

Rufino and Leviste Sts., Salcedo Village, Makati City

alampaytamase@gmail.com

RE 721 985 327 27

SAN DIEGO LAW OFFICE

c/o ATTY. SHEILLA F. SAN DIEGO

Counsel for Messrs. Roberto and Jose Magallanes

Suite 2301, Makati Prime Citadel,

5007 P. Burgos cor. Caceres St.,

Makati City

sheilasandiego@gmail.com

335 27

UPPO-OC

07-27-2023

ROBERTO B. MAGALLANES
JOSE B. MAGALLANES

Defendants

Nueva Street, Brgy. Poblacion IV,
Coron, Palawan

344 22

**DEPARTMENT OF ENVIRONMENT &
NATURAL RESOURCES-MIMAROPA**

Defendant

1515 Roxas Blvd.,
Ermita, Manila
mimaroparegion@denr.gov.ph

358 22

**DEPARTMENT OF PUBLIC WORKS & HIGHWAYS-
MIMAROPA**

Defendant

790 Epifanio de Los Santos Avenue,
Diliman, Quezon City
pacanan.gerald@dpwh.gov.ph

361 22

**LOCAL GOVERNMENT OF CORON, PALAWAN
c/o OFFICE OF THE MAYOR**

Defendant

Municipal Hall of Coron, Palawan

375 22

UPPO-AC

07-27-2023

EXPLANATION

Due to constraints in time, distance and manpower, copies of the foregoing *Comment/Opposition* shall be filed and served on the other parties by REGISTERED MAIL, personal service not being practicable under the circumstances.

In light of the physical limitations brought about by the COVID-19 pandemic and in accordance with par. 4 of Administrative Circular No. 41-2020 dated 29 May 2020, a copy of this pleading is also filed/served via EMAIL.


JENNY G. LIBUTAGUE

REPUBLIC OF THE PHILIPPINES
AFFIDAVIT OF SERVICE

I, **JOEL C. CALDERON**, of the Office of the Government Corporate Counsel, with office address at 3rd Floor, MWSS Administration Building, Katipunan Avenue, Old Balara, Quezon City, after being duly sworn to, depose and say:

That on 27 July 2023, I served a copy of the following pleading/ paper:

NATURE OF PLEADINGS/PAPER
COMMENT/OPPOSITION

In Civil Case CRN-1084 entitled "**BCT TRADING AND CONSTRUCTION AND 428 HI-TECH GROUP, INC., vs. ROBERTO B. MAGALLANES AND JOSE B. MAGALLANES, JR., ET AL.**" pursuant to Section 3, 4, 5 and 10, Rule 13 of the Rules of Court, as follows:

By personal service to:

By Ordinary Mail to/Special Delivery to:
By Registered Mail to:

REGIONAL TRIAL COURT
Fourth Judicial Region
Branch 163, Coron, Palawan

ALAMPAY AND TAMASE LAW OFFICE

ROBERTO B. MAGALLANES
JOSE B. MAGALLANES

**DEPARTMENT OF ENVIRONMENT &
NATURAL RESOURCES-MIMAROPA**

**DEPARTMENT OF PUBLIC WORKS &
HIGHWAYS-
MIMAROPA**

**LOCAL GOVERNMENT OF CORON,
PALAWAN**
c/o OFFICE OF THE MAYOR

SAN DIEGO LAW OFFICE

By delivery personally a copy to the party of
his/her attorney on _____ as show up
on p. _____.

By leaving a copy of in his/her office with
his/her clerk or with a person having charge
thereof on _____ as
shown on p. _____.

By delivery a copy of the Court/Tribunal/Office
on _____ shown on p. _____.

By depositing on _____ a copy in the
post office at _____ in a sealed envelope,
plainly addressed to the party or his/her attorney
at his/her office/residence with postage fully
paid and with instruction to the postmasters to
return the mail to the sender after ten (10) days if
undelivered.

By depositing a copy on _____ in the
post office at _____ as evidences
by Registry Receipts(s) No. (s) _____ of
the addressee(s) and with instructions to the
postmaster to return the mail to sender after ten
(10) days if undelivered.

Quezon City, for Coron, Palawan, 27 July 2023.


JOEL C. CALDERON
Affiant

SUBSCRIBED AND SWORN to before me this 27 July 2023, affiant personally appeared before me and exhibited to me his ID No. 125.

Doc. No. 446
Page No. 88
Book No. 5411
Series of 2023.


ATTY. ROSALINDA ADRIANO MONTENEGRO
NOTARY PUBLIC

My Commission Expires on December 2023

PTR No. 4028249 01/03/2023 - QC

IBP OR No. 263982 01/03/2023 - QC

Roll No. 68465

MCLE Compliance No. VII-0021672 14 April 2024