

TUBBATAHA MANAGEMENT
OFFICE Represented by
ANGELIQUE SONGCO,

TAB ADMIN CASE NO. 23-11

Complainant,

-versus-

For:

MR. ERNESTO T.
BATUNGBACAL (OWNER), MS.
VANESSA JESSICA
VALDERAMA (BOAT
MANAGER), MR. MAXIMO
CARANDANG (BOAT CAPTAIN),
OF M/Y RESOLUTE

VIOLATION OF CHAPTER 4,
RULE 21 (DAMAGE TO THE
REEF) OF TPAMB ADMIN.
ORDER NO. 1, SERIES OF
2017

Respondents.

X-----X

RECORD OF PRELIMINARY CONFERENCE

PRELIMINARY MATTERS

This case was referred to the Technical Working Group created by the Tubbataha Adjudication Board (TAB) during its meeting on May 31, 2023 pursuant to Section 21 of its Rules of Procedure. Atty. Adelina Benavente-Villena and Atty Joanna Sarah Diva were appointed as members thereof.

Appearing for the parties are Angelique Songco and Ernesto T. Batungbacal, with Louie Bernardo, for the Complainant and Respondents, respectively. Both parties manifested that they are clothed with sufficient authority from their principals and they are willing to enter into an amicable settlement pursuant to Section 21, paragraph (a) of the TAB Rules of Procedure and other relevant laws.

SUMMARY OF THE CASE

I. VERSION OF THE COMPLAINANT

1. At approximately 1:00 PM on March 27, 2023, Marine Park Ranger (MPR) Danny Lausing observed that M/Y Resolute had run aground on the reef near mooring buoy No. 2 in the vicinity of the ranger station.

2. Despite making several attempts to establish communication with M/Y Resolute in order to verify the situation, MPR CGNO Russelkhan Gadjala was unsuccessful in receiving a response from the vessel.
3. Following the report from MPR Danny Lausing and the unsuccessful attempts made by MPR CGNO Russelkhan Gadjala to communicate with M/Y Resolute, the marine park rangers quickly mobilized a team to investigate the situation. The team, consisting of experienced and trained personnel, promptly arrived at the site near mooring buoy No. 2 near the ranger station.
4. Upon arrival, the team conducted a meticulous examination of the vessel and its surroundings. Their investigation concluded that M/Y Resolute had indeed run aground on the reef.
5. MPR Jeffrey David promptly initiated a distress call to P/Y Palau Sport for assistance, while a representative from M/Y Resolute contacted M/Y Stella Maris to aid in the extraction of the vessel from the reef.
6. The MPR team, consisting of Segundo F. Conales Jr., Cresencio F. Caranay Jr., Jeffrey M. David, and Noel Bundal, in conjunction with the boat manager of M/Y Resolute, Ms. Vanessa Jessica Valderama, conducted a comprehensive evaluation of the situation at hand.
7. During the assessment, the team meticulously measured the total extent of the coral damage caused by the grounding of M/Y Resolute. The team's collective expertise and experience allowed them to conduct a thorough and objective examination of the damage, ensuring that the true scale of the environmental impact was accurately determined.
8. The team estimated the total coral damage to be 133.36 square meters
9. Consequently, the Complainant prayed that the total amount of the fine levied to be imposed on the violator amounts to Three Million Two Hundred Thousand and Six Hundred Forty Pesos (Php3,200,640.00), which includes both the administrative penalty for the incurred coral damage and the restoration process, in accordance with the relevant administrative regulations.

II. VERSION OF THE RESPONDENTS

1. On March 27, 2023, at around 12:45pm, M/V Resolute tried to tie to mooring buoy No. 2;

2. While maneuvering, the morse control malfunctioned. The control failed to move to neutral or forward from the reverse setting;
3. As a result, the ship started moving backward toward the reef;
4. About 10 meters of the stern of the ship hit the shallow reef;
5. Tubbataha marine park rangers arrived to conduct an investigation of the incident and to assess the coral damage with a representative of the respondents;
6. With some help from M/V Stella Maris Explorer, M/Y Resolute was freed from the reef;
7. After the respondents' inspection and that of the Tubbataha marine rangers, they conclude that M/V Resolute is safe to navigate back to Puerto Princesa on March 29, 2023.
8. Marine park rangers determined the coral damage caused by the grounding incident to be 133.36 square meters;
9. However, as per the respondents' own examination, the damage would not reach 133.36 square meters.
10. Respondents are requesting to allow a third party, particularly Project Sharklink, Inc., to conduct a resurvey. Preferably, the survey should be observed by representatives of the Tubbataha Management Office (TMO) as well as the original surveyors.
11. If, as a result of the resurvey, they are able to determine that the damage is indeed 133.36 square meters, respondents pray that the penalty for coral damage and restoration be settled in staggered payments to allow the respondents to earn the funds to pay the penalty.

STIPULATED FACTS

Based on the pleadings of the parties, the following facts have been stipulated:

1. Respondent conceded that M/V Resolute damaged a portion of the reef.
2. On May 8, 2023, a re-assessment of the damaged area was conducted by Complainant, Angelique Songco, and Respondent, Ernesto T. Batungbacal, without the presence of a third-party surveyor.

ISSUES DISCUSSED

1. Whether or not the size of the area damaged is 133.36 square meters

2. Whether or not the penalty for coral damage and restoration could be settled in staggered payments to allow the respondents to earn the funds to pay the penalty.

MATTERS RESOLVED DURING PRELIMINARY CONFERENCE

1. After thorough deliberation, both parties arrived at 88.75 square meters as the total area of coral damage caused by the M/V Resolute;

Hence, 88.75 square meters shall be the basis for computing the amount of fine to be imposed pursuant to Rule 21 of Chapter 4 (Prohibited Acts and Penalties) of Tubbataha Protected Area Management Board, Administrative Order No. 1, Series of 2017, to wit:

Damage to the reef shall subject the responsible person or entity to the payment of administrative fines set by the TPAMB based on the current valuation standards, which shall not be less than Twelve Thousand Pesos (Php12,000.00) per square meter. The violators shall also be liable for the payment of the cost of restoration which shall not be less than Twelve Thousand Pesos (PhP12,000.00) per square meter, or as may be determined by the TPAMB.

The imposable fine against the Respondents is Two Million, One Hundred Thirty Thousand Pesos (Php 2,130,000.00).

2. Both parties agreed that the penalty of the fine will be settled to staggered payments. The Respondents agreed to pay the fine in the amount of Two Million, One Hundred Thirty Thousand Pesos (Php 2,130,000.00) in quarterly tranches for three (3) consecutive years. Fifty percent (50%) of the said amount or One Million Sixty-Four Thousand, Nine Hundred Sixty-Four Pesos (P1,064,964.00) will be paid quarterly beginning August 2023 until May 2025. The remaining fifty percent (50%) or One Million Sixty-Four Thousand, Nine Hundred Sixty-Four Pesos (P1,064,964.00) will be paid at the end of the third and last year, more specifically on or before May 2026.

The Respondents are likewise amenable to issuing post-dated checks and are fully aware of the criminal and civil liabilities entailed should the subject checks bounce.

The payment plan is shown below:

2023	
MONTH	AMOUNT TO BE PAID
August	P133,125.00
November	133,125.00
2024	
February	133,125.00
May	133,125.00
August	133,125.00
November	133,125.00
2025	
February	133,125.00
May	133,125.00
2026	
May	1,064,964.00
TOTAL	P2,130,000.00

LET this summary report of the proceeding before the TWG be submitted to the Tubbataha Adjudication Board for its confirmation.

Puerto Princesa City, this June 15, 2023


ATTY. ADELINA BENAVENTE-VILLENA
DIVA

Member, TWG


ATTY. JOANNA SARAH

Member, TWG


ANGELIQUE SONGCO
Complainant


ERNESTO T. BATUNGBACAL
Respondent


ANTHEA VALENZUELA
Witness


LOUIE BERNARDO
Witness