

**Republic of the Philippines  
Fourth Judicial Region  
REGIONAL TRIAL COURT  
Branch 163**

**Coron, Palawan**  
[rtc2cnp163@judiciary.gov.ph](mailto:rtc2cnp163@judiciary.gov.ph)  
CP No. 09266583068

**BCT TRADING & CONSTRUCTION  
and 428 HI-TECH GROUP, INC.,**  
Plaintiff,

-versus-

**CIVIL CASE No. CRN-1084  
For: INJUNCTION & DAMAGES**

**ROBERTO B. MAGALLANES and  
JOSE B. MAGALLANES, SR., styling  
Themselves as "SAGIP PALAWAN",  
PHILIPPINE RECLAMATION  
AUTHORITY, DEPARTMENT OF  
ENVIRONMENT & NATURAL  
RESOURCES-MIMAROPA,  
DEPARTMENT OF PUBLIC WORKS  
& HIGHWAYS-MIMAROPA and  
THE LOCAL GOVERNMENT UNIT  
of CORON, PALAWAN,**  
Defendants.

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**R E S O L U T I O N**

Before this court is a complaint for INJUNCTION AND DAMAGES with Application for Temporary Restraining Order and Writ of Preliminary Injunction filed by the plaintiffs against the respondents alleging that the act of respondents Roberto B. Magallanes and Jose B. Magallanes, Jr., who, in their own account, and upon their instructions, caused the excavation of huge chunks of the reclaimed area, excavated huge chunks of the reclaimed area, approximately 2,300 cubic meters, using backhoes and other heavy equipment which, according to the complainants, caused them damages.



## **FACTUAL and LEGAL ANTECEDENTS**

On May 29, 2018, the Sangguniang Panlalawigan of Palawan enacted Provincial Ordinance No. 1971, series of 2018 entitled "PURSUING A PUBLIC-PRIVATE PARTNERSHIP FOR THE PEOPLE (4P) APPROACH TOWARDS DEVELOPMENT, PROVIDING FOR THE PROCEDURE IN SELECTING THE PRIVATE SECTOR PROPONENT, ADOPTING A CONTRACT MANAGEMENT FRAMEWORK xxxx". The ordinance was enacted to provide more, better, affordable and timely services to the community by engaging private participation and partnership with the province in undertaking new infrastructure projects.

One of the infrastructure projects of the province is the reclamation of the foreshore and offshore areas of the Municipality of Coron, Palawan, covering the shorelines of Barangay Poblacion 1, 2, 3, 4 and 5 including Barangay Tagumpay and the development of the same into commercial, recreational and institutional uses. The project is now known as the Coron Bay Development Project.

Considering that this project involves reclamation of a portion of Coron Bay, the Province of Palawan entered in an agreement (Memorandum of Agreement) with the Philippine Reclamation Authority,<sup>1</sup> wherein the parties shall, among others cooperation with each other in the planning and implementation of the project which is now the CORON BAY DEVELOPMENT PROJECT.

Having now the authority to enter into agreement with private sector pursuant to Provincial Ordinance No. 1971, series of 2018 (the PPP) and the legal capacity or authority to reclaim portion of Coron Bay pursuant to Memorandum of Agreement with the Philippine Reclamation Authority, the province entered into a Contractual Joint Venture Agreement with BCT Trading and Construction and 428 Hi-Tech Group, Inc. The agreement acknowledges the project owner, the Province of Palawan, as duly authorized under its charter and under the provisions of Republic Act No. 7160 (The Local Government Code of the Philippines) to undertake reclamation and development projects within its jurisdiction. This was also the content of the Memorandum of Agreement between the Province of Palawan and the Philippine Reclamation Authority.

Earlier, BCT TRADING & CONSTRUCTION and 428 HI-TECH GROUP, INC., also entered in a joint venture agreement for the reclamation of a portion of Coron Bay. The agreement recognizes the existing Memorandum of Agreement between the Province and

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<sup>1</sup> Formerly known as Public Estates Authority created by PD 1084



the Philippine Reclamation Authority pertaining to an approved reclamation project covering fifty (50) hectares. The Joint Venture Agreement between the plaintiffs manifests their respective interest in the implementation of the reclamation and land development of the remaining unreclaimed portion of the Coron Bay Development Project and offered their experience, expertise and financial capability including their other respective resources to implement the reclamation project and to perform the desired raw land reclamation and horizontal development at no cost to the Provincial Government of Palawan under an unsolicited proposal.

On October 1, 2019, the Provincial Government of Palawan wrote a letter to Atty. Janilo E. Rubiato, General Manager, Philippine Reclamation Authority, informing the latter that "After subjecting the unsolicited proposal submitted to the Provincial Government of Palawan to the selection process pursuant to Provincial Ordinance No. 1971<sup>2</sup> xxx, the Provincial Government of Palawan awarded the project to the joint venture between BCT Trading and Construction and 428 Hi-Tech Group, Inc. The agreement between the Province and the said entities have already been signed." The letter further requests for the issuance of the Notice to Proceed (NTP) to enable the parties to commence the development works.

In response to the letter of the Province of Palawan, the Philippine Reclamation Authority issued a Notice to Proceed letter to the Province of Palawan dated December 11, 2019 authorizing the province to proceed with the project subject to compliance with the additional requirements. A Payment Advise was also included in the letter. A corresponding Order of Payment for 20% Initial payment of regulatory fee amounting to P12,408,00 was issued by the Philippine Reclamation Authority to the Province of Palawan as payee. Another Order of Payment for 20% Initial Payment of Social Environment Fund (SEF) amounting to P4,512,000.00 was likewise issued to the province.

On December 27, 2019, the Province of Palawan paid the amount of P12,408,000.00 to the PRA and a corresponding receipt was issued for INITIAL PAYMENT OF REGULATORY FEE with OR No. 0016302. The amount of P4,512,000.00 as payment for INITIAL PAYMENT OF SOCIAL ENVIRONMENT FUND was likewise paid by the province and it was covered by OR No. 00000173.

In January 2020, plaintiffs already began reclamation works.

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<sup>2</sup>Pursuing a Public-Private Partnership for the People Approach (4P)



On August 24, 2020, the Provincial Government of Palawan through then Governor Alvarez wrote then Sec. Roy Cimatú requesting for the issuance of the Area Clearance.

On December 18, 2020, while waiting for the DENR's reply, the Provincial Government of Palawan already tasked 428 Hi-Tech to submit ahead the rest of additional technical requirements to PRA, which the latter acknowledged in its reply-letter dated February 22, 2021.

In November 2021, the Regional Composite Team of DENR-MIMAROPA issued a Memorandum for its Regional Executive Director finally recommending the issuance of the requested area clearance for CBDP in favor of the Provincial Government of Palawan.

On November 24, 2021, the Regional Executive Director of DENR-MIMAROPA issued a Memorandum for the Secretary through the Undersecretary for Field Operations and Environment, recommending " that the area clearance be issued in favor of the proponent, Provincial Government of Palawan for the Coron Bay Development Project in Barangays Poblacion 2, 3, and 5, in the Municipality of Coron, Province of Palawan.

On December 1, 2021, the undersecretary for field operations and Environment endorsed for proper action the above-mentioned memorandum for the Secretary issued by the Regional Executive Director of DENR-MIMAROPA to the Acting Director of the Land Management Bureau.

On January 27, 2022, the LMB, through its Acting Director, issued a memorandum for the Regional Executive Director of DENR- MIMAROPA, requesting the submission of one more document- the Geohazard Identification Report (GIR)-before taking action on the said endorsement for the issuance of the Area Clearance.

On March 10, 2022, the OIC Regional Executive Director of DENR-MIMAROPA issued a Memorandum for the Director of LMB, submitting the Geological Site Scoping Report (GSSR), with an explanation from the OIC Regional Director of the Mines and Geosciences Bureau that the submission of the GSSR would sufficiently comply with the required GIR since their objective is basically the same, which is to identify potential geological hazards within a specific area.

Plaintiff points out that during the period while the Provincial Government of Palawan was complying with and submitting the requirements to the DENR in support of its application for Area Clearance, reclamation activities on the CBDP were suspended as of



February 2021, upon the written advice of the DENR's OIC-CENRO for Coron, date January 28,2021 to temporarily stop reclamation works pending the issuance of the Area Clearance. Plaintiff also emphasized that from the time they began their reclamation activities in January 2020 up to February 2021, they have already reclaimed 22 hectares out of the 40 hectare goal under their CJVA with the Provincial Government of Palawan.

Then on March 24, 2022, the PRA issued a Cease and Desist Order against the Provincial Government of Palawan, enjoining it from further undertaking reclamation activities pending compliance with all requirements mentioned in its NTP, foremost of which is the Area Clearance from the DENR.

On March 29,2022, the Provincial Government of Palawan through then Governor Alvarez responded by updating the PRA of the on-going processing of the required area clearance and the fact that it has already been recommended for issuance and is just awaiting appropriate action by the DENR\_LMB. In the same letter, the Provincial Government of Palawan also informed PRA that it has already ceased its reclamation operations as early as February 2021 in compliance with the earlier advice of the DENR's CENRO for Coron, Palawan dated January 28,2021.

Sometime in June 2022, to the plaintiff's utter shock and dismay, they learned from several news and media outlets that PRA has issued an alleged Forfeiture Order against the on-going reclamation project in favor of the government. Significantly, neither the Provincial Government of Palawan, nor its joint venture partners, BCT and 428 Hi-Tech, received any notice of the alleged forfeiture proceedings. Plaintiff emphasizes that if indeed it were so, they intend to move for reconsideration and that said Forfeiture Order has not yet attained finality.

On March 01, 2023, plaintiffs received a letter from the PRA dated February 23, 2023 informing them that there is such a forfeiture order, but did not actually furnish the plaintiff a copy of the said order or even of the alleged Governing Board resolution approving the same. In the same Letter, the PRA informed plaintiffs that there is an Inter-Agency Task Force for the Rehabilitation of Coron which had met and agreed to implement so-called mitigation measures on the reclamation project on Feb. 27, 2023.

On March 2, 2023, plaintiffs responded with a Letter of their own wherein they informed PRA that they have yet to receive a copy of this Forfeiture Order and requesting that it be furnished to them so they can take proper action. Moreover, plaintiffs also questioned the creation of the so-called IATF, and noted that it was actually this SAGIP-CORON PALAWAN, which is not even a juridical entity,



that appears to spearhead this flurry of activities on the reclaimed area as if it is the one heading this purported IATF.

### **Defendants' alleged illegal activities in the area**

Plaintiff alleges that by their own accounts, defendant brothers Bobby and Yong Magallanes created SAGIP CORON sometime in March of 2022 which suspiciously coincides with the issuance of the Cease and Desist Order of the PRA on March 24, 2022.

SAGIP CORON actually has no juridical personality of its own. It is not registered as any kind of entity with the SEC, has no official business address, and only has an email address and a cellular phone number as its means of communication. Nevertheless, in all its communications, it is almost always either Bobby or Yong Magallanes who represents SAGIP CORON.

Sometime towards the end of January 2023, defendant Bobby Magallanes, using his-alter ego, SAGIP CORON, sent invitations via email to various government agencies, including the nominal defendants herein, to convene and meet on February 9 2023 at the Luxent Hotel in Quezon City. Plaintiff points out that neither defendants Bobby or Yong Magallanes, nor Sagip Coron, has any mandate whatsoever from the National or Local Government to convene or facilitate this meeting.

Nevertheless, according to plaintiff, many invited government agencies actually attended and thereafter released a document titled "Agreement Reached During the Inter-Agency Meeting at the Luxent Hotel on Feb.9,2023", detailing the purported agreements reached during the meeting.

Again plaintiff laments that whatever agreements reached in that meeting is null and void and have no legal effect whatsoever. At best, the purported agreements were merely individual expressions of opinions by the individual attendees in their personal capacities, and in no way bind the government offices they represent.

Among the purported agreements reached on the February 9 meeting is the implementation of the so-called "mitigation measures" on the forfeited reclaimed area which comprise of excavation of land, opening of waterway, and installation of sea walls on the excavated sites. They planned to begin implementation of these so-called mitigation measures on February 27,2023.

Thereafter, a "Second Inter-Agency Meeting via Zoom" was conducted on 20 February 2023, where a purported resolution was allegedly approved by the body that the above mentioned mitigation measures be implemented as scheduled on 27 February 2023.

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On February 27, 2023, Magallanes Brothers representing themselves as SAGIP CORON, proceeded with the implementation of the purported mitigation measures as scheduled on February 27, 2023. They began implementing these so-called mitigation measures by excavating a huge chunk of the reclaimed area, approximately 2,300 cubic meters, using backhoes and other heavy equipment provided by private contractors and not by any government agency.

Plaintiff also posits that this is only the beginning. According to their so-called “agreements” and “resolution”, the so-called “mitigation measures” also include the opening of waterways, which could only mean more excavations in the reclaimed area, and constructing sea walls on the excavation “sites”, meaning they intend to excavate multiple areas. If they are not stopped, they will continue to destroy the reclaimed area and cause plaintiffs, the Provincial Government of Palawan, and the local community who would benefit from the reclamation, immense irreparable injuries.

### ISSUE

Whether or not the Plaintiff is entitled to a Temporary Restraining Order as prayed for.

### Ruling of this Court

The Court rules in the affirmative.

At the outset, during the ex-parte hearing of the Motion on March 20, 2023, when asked by the Court if they have personal knowledge if the required permits, specifically an Environmental Compliance Certificate regarding the excavation of certain portions of the subject reclaimed area, were issued to private respondents, Petitioner’s witnesses answered in the negative. Thus, on this basis alone, the Temporary Restraining Order, sought by the plaintiff to enjoin the performance of the so-called mitigation measures, may be granted. **To allow the continued operation of the private defendants, without the required ECC or other Permits, poses environmental hazards, which ironically, is the problem sought to be remedied allegedly by SAGIP-CORON.** It is well to remember that one of the very basis of the PRA’s Cease and Desist Order directed to the plaintiff is non-compliance with all the requirements, foremost of which is the Area Clearance from the DENR.

In the case ***of SUMIFRU (Philippines) Corporation vs. Spouses Danilo Cereno and Cerina Cereno***<sup>3</sup>, the following requisites must be proved before a writ of preliminary injunction, whether mandatory or prohibitory, will be issued:

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<sup>3</sup>GR 218236, Feb 07, 2018.



1. the applicant must have a clear and unmistakable right to be protected, that is a right *in esse*;
2. there is material and substantial invasion of such right;
3. there is an urgent need for the writ to prevent irreparable injury to the applicant; and
4. no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.

In the plaintiff's discussion, they assert that they have a clear and unmistakable right to the preservation of the 22-hectare reclaimed area since they have toiled extremely hard and utilized considerable amount of manpower and financial resources in the performance of their financial obligations. Also, the alleged Forfeiture Order has not yet attained finality since it has yet to be served upon the plaintiffs. Due process have to be afforded to them, and plaintiffs rights in the meantime over the reclaimed area must be respected.

To the mind of this Court, there is of yet a clear and unmistakable right in favor of the plaintiff. Their allegations may only be fully ventilated under a full blown trial, considering that there is an allegation of a Forfeiture Order issued by the PRA. However, the Supreme Court ruled in the above mentioned case, citing ***Developers Group of Companies vs. Court of Appeals***<sup>4</sup>, that while it is not required that the claimed right be conclusively established at this stage, it is nevertheless necessary to show, at least tentatively, that it exists and is not vitiated by any substantial challenge or contradiction, such as has been made by the private respondent. In that regard, it is the opinion of this Court that plaintiff has ***tentatively*** shown a right which needs to be protected.

To reiterate, to allow the continued activities in the subject reclaimed area conducted by the respondents, poses threat of irreparable injury to the environment since by inference, no permit from the Local Government nor Environmental Clearance Certificate had been issued to them. The lack of these requirements seems to suggest and affirm the allegation of the plaintiff that no scientific research or data are available to justify the so-called mitigation measures being conducted and will be conducted by the respondents.

The excavation works last February 27, 2023, is just the initial step of their so-called "mitigation measures", which include further acts such as opening waterways and construction of sea walls. Thus, these further acts of opening waterways and construction of

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<sup>4</sup>G.R. No. 104583 March 8, 1993



sea walls constitute an urgent need for the writ to prevent irreparable injury not only to the applicant, but to the environment in its entirety, as well.

Further, the Court is not unmindful of OCA Circular No. 79-2003, reminding judges to exercise utmost caution, prudence and judiciousness in issuance of Temporary Restraining Orders and Writs of Preliminary Injunctions. One subject of which is the execution and implementation of the infrastructure and natural resources development projects or the operation of public utility by the government.

Section 1 of Presidential Decree 1818 provides that:


Sec1. No court in the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction, or preliminary mandatory injunction in any case, dispute, or controversy involving an infrastructure project, or a mining, fishery, forest or other natural resource development project of the government, or any public utility operated by the government, including among others public utilities for the transport of the goods or commodities, stevedoring and arrastre contracts, to prohibit any person or persons, entity or governmental official from proceeding with, or continuing the execution or implementation of any such project, or the operation of such public utility, or pursuing any lawful activity necessary for such execution, implementation or operation.

In this case, the grant of the restraining order is not subject of the above-cited circular, since, the writ sought is not to enjoin the execution and implementation of the infrastructure and natural resources development projects or the operation of public utility by the government. It is actually the reverse. The writ is sought to protect a previously executed and implemented infrastructure project-the Coron Bay Development Project.

WHEREFORE, premises considered, this court resolves to GRANT the Temporary Restraining Order for a period of 72 hours from receipt of this Order. The respondents are hereby enjoined to cease and refrain from performing any activity in the reclaimed area covered by Coron Bay Development Project within the period provided.

SO ORDERED.

Given this 21<sup>st</sup> day of March, 2023 at Coron, Palawan.

  
**ARNEL P. CEZAR**  
Presiding Judge

