

REPUBLIC OF THE PHILIPPINES  
**REGIONAL TRIAL COURT**  
Fourth Judicial Region  
**Branch 163**  
Coron, Palawan

DENR MIMAROPA RECORDS SECTION <b>RECEIVED</b>	
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**BCT TRADING AND  
CONSTRUCTION and 428 HI-  
TECH GROUP, INC.,**  
*Plaintiffs,*

- versus -

**Civil Case No. CRN-1084**

**ROBERTO MAGALLANES and  
JOSE B. MAGALLANES, JR.  
STYLING THEMSELVES AS  
"SAGIP CORON PALAWAN,"  
PHILIPPINE RECLAMATION  
AUTHORITY, DEPARTMENT  
OF ENVIRONMENT AND  
NATURAL RESOURCES-  
MIMAROPA, DEPARTMENT  
OF PUBLIC WORKS AND  
HIGHWAYS-MIMAROPA, AND  
THE LOCAL GOVERNMENT OF  
CORON, PALAWAN,**  
*Defendants.*

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**C O M M E N T**

(On the Complaint dated March 15, 2023)

Public Defendants **DEPARTMENT OF ENVIRONMENT  
AND NATURAL RESOURCES - MIMAROPA** ("DENR") and  
**DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS -  
MIMAROPA** ("DPWH"), through the Office of the Solicitor  
General, to this Honorable Court, respectfully state:

1. In Paragraph 1.03 of the Complaint, Plaintiffs BCT  
Trading and Construction ("BCT Trading") and 428 Hi-Tech  
Group, Inc. ("428 Hi-Tech") impleaded Public Defendants  
DENR and DPWH as nominal parties.

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2. In *Samaniego v. Aguila*,<sup>1</sup> the Supreme Court emphasized that a nominal or pro forma party is one who is joined as a plaintiff or defendant, not because such party has any real interest in the subject matter or because any relief is demanded, but merely because the technical rules of pleadings require the presence of such party on the record.

3. Nonetheless, Public Defendants DENR and DPWH are constrained to file the instant Comment so as to address Plaintiffs BCT Trading and 428 Hi-Tech's insinuation in Paragraph 2.18 of the Complaint that there is no hindrance in the issuance of an Area Clearance for the Coron Bay Development Project ("CBDP") and that it is just a matter of time before the same is issued.

4. It bears stressing that the Joint Venture of the Provincial Government of Palawan ("PGP"), BCT Trading, and 428 Hi-Tech did not secure an Area Clearance from Public Defendant DENR prior to the conduct of actual reclamation works in connection with the CBDP.

5. Section 4.1 of DAO No. 2018-14<sup>2</sup> defines an Area Clearance as a document issued by the DENR Secretary declaring an area suitable for reclamation, and Section 5 of DAO No. 2018-14<sup>3</sup> categorically states that no reclamation projects shall be allowed unless an area clearance is first secured from the DENR.

6. As the manager, conservator, and overseer of the natural resources of the State, Public Defendant DENR exercises exclusive jurisdiction on the management and disposition of all lands of the public domain, hence, it has the power to decide whether areas under water should be reclaimed or not.<sup>4</sup>

7. Relative thereto, *first*, Sec. 6.1.3 of the Contractual Joint Venture Agreement<sup>5</sup> ("CJVA") required Joint Venture Partners / Plaintiffs BCT Trading and 428 Hi-Tech ("Joint Venture"), as project developers, to complete all requirements of other government agencies, if any,

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<sup>1</sup> G.R. No. 125567, June 27, 2000.

<sup>2</sup> *Guidelines on the Issuance of an Area Clearance for Reclamation Projects and Reclamation / Special Patents over Reclaimed Lands*, August 14, 2018.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*, Prefatory Statement.

<sup>5</sup> Annex "C".

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prior to the issuance of the Reclamation Permit by the Philippine Reclamation Authority ("PRA").

8. *Second*, Sec. 6.2.1 of CJVA reiterated that the Joint Venture shall commence reclamation and development upon the PGP's issuance of the Notice to Proceed, inclusive of all necessary approvals, and reclamation and development permits, by appropriate government offices and agencies which have jurisdiction over the project.

9. *Third*, an agreement and an issuance directed the Joint Venture, through the PGP, to secure an Area Clearance from Public Defendant DENR, among others, in order to commence actual reclamation works, *viz*:

A. Article IV.A.5 of the Memorandum of Agreement ("MOA") between the PRA and the PGP required the latter secure and comply with all necessary permits / clearances as well as administrative / government consents / permits / licenses / authorizations from concerned government agencies as may be required for the implementation of the CBDP;<sup>6</sup>

B. Article IV.B.2.13 of the MOA between the PRA and the PGP required the PGP to secure an Area Clearance from Public Defendant DENR;<sup>7</sup> and

C. The Resolution No. 5078 (Series of 2019), the List of Additional Requirements attached to the Notice to Proceed and the Letter dated February 22, 2021, all issued by the PRA, similarly required the PGP to comply with conditions and/or requirements of government agencies including Public Defendant DENR as enumerated in the Environmental Compliance Certificate for the CBDP.<sup>8</sup>

10. It is incumbent upon the Joint Venture, therefore, to secure an Area Clearance from Public Defendant DENR, among others, prior to the conduct of actual reclamation works.

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<sup>6</sup> Annex "A" of the Complaint.

<sup>7</sup> *Id.*

<sup>8</sup> Annex "E" of the Complaint.

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11. As admitted by Plaintiffs BCT Trading and 428 Hi-Tech in Paragraphs 2.09 and 2.19 of the Complaint, however, the Joint Venture began reclamation works by January 2022<sup>9</sup> and completed twenty-two (22) hectares of reclamation works by January 2022<sup>10</sup> without having secured an Area Clearance for the CBDP.<sup>11</sup>

12. In compliance with Public Defendant DENR's constitutional mandate to ensure the development and utilization of the natural resources of the State and in view of the revocation of the Environmental Clearance Certificate for the CBDP, the Regional Executive Director in MIMAROPA of Public Defendant DENR withdrew her recommendation to issue an Area Clearance for the CBDP.

13. In light of the *Status Quo Ante* Order issued by this Honorable Court on March 22, 2023, the parties are bound to maintain the state of affairs existing prior to the filing of the instant case, that is, no reclamation projects shall be allowed unless an area clearance is first secured from the DENR.

14. Moreover, it appears that Plaintiffs BCT Trading and 428 Hi-Tech have no legal personality to file the instant case.

15. In Paragraph 1.01 of the Complaint, Plaintiff BCT Trading admitted that it is a sole proprietorship.

16. In *Mangila v. Court of Appeals*,<sup>12</sup> the Supreme Court emphasized that there is no law authorizing sole proprietorships to file a suit in court:

**A sole proprietorship does not possess a juridical personality separate and distinct from the personality of the owner of the enterprise.** The law merely recognizes the existence of a sole proprietorship as a form of business organization conducted for profit by a single individual and requires its proprietor or owner to secure

<sup>9</sup> Par. 2.09 of the Complaint, p. 7.

<sup>10</sup> Par. 2.19 of the Complaint, p. 9.

<sup>11</sup> Pars. 2.11, 2.18 and 2.20 of the Complaint, pp. 7 and 9; Letter dated August 24, 2020 from Gov. Alvarez of the Provincial Government of Palawan; Letter dated January 28, 2021 from Community Environment and Natural Resources Officer in Coron, Palawan; and Letter dated March 29, 2022 from Gov. Alvarez of the Provincial Government of Palawan.

<sup>12</sup> G.R. No. 125027, August 12, 2002 cited in *Excellent Quality Apparel, Inc. v. Win Multi-Rich Builders, Inc.*, G.R. No. 175058, February 10, 2009.

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licenses and permits, register its business name, and pay taxes to the national government. **The law does not vest a separate legal personality on the sole proprietorship or empower it to file or defend an action in court.**<sup>13</sup>

17. Clearly, Plaintiff BCT Trading does not have a legal personality separate from its owner which could enable it to file a suit in court.

18. Assuming, for the sake of argument, that Plaintiff BCT Trading is a corporation like Plaintiff 428 Hi-Tech which has a legal personality to file an action in court, neither Plaintiff BCT Trading nor Plaintiff 428 Hi-Tech has legal personality to institute the instant case, or any case for that matter, arising from or in connection with the implementation of the CBDP.

19. Based on Sec. 2, Rule 3 of the Rules of Court, every action must be prosecuted in the name of the real party in interest who stands to be benefited or injured by the judgment in the suit or who is entitled to the avails of the suit.

20. The rule on real party in interest has two (2) requirements, namely: (a) to institute an action, the plaintiff must be the real party in interest; and (b) the action must be prosecuted in the name of the real party in interest. One having no material interest cannot invoke the jurisdiction of the court as the plaintiff in an action. When the plaintiff is not the real party in interest, the case is dismissible on the ground of lack of cause of action.<sup>14</sup>

21. In Paragraph 2.05 of the Complaint, Plaintiffs BCT Trading and 428 Hi-Tech admitted that the PGP, as project owner, and Joint Venture Partners / Plaintiffs BCT Trading as well as 428 Hi-Tech, as project developer, executed a CJVA<sup>15</sup> for the continuation of the CBDP.

22. Therefore, it is the Joint Venture of the PGP, BCT Trading and 428 Hi-Tech which may file a suit arising from or in connection with the implementation of the CBDP.

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<sup>13</sup> Emphasis supplied.

<sup>14</sup> *Ang v. Pacunio*, G.R. No. 208928, July 8, 2015 citing *Goco vs. Court of Appeals*, G.R. No. 157449, April 6, 2010.

<sup>15</sup> Annex "C".

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**PRAYER**

**WHEREFORE**, it is respectfully prayed that the instant Comment be **NOTED** as substantial compliance with this Honorable Court's Summons dated March 17, 2023.

Other reliefs, just and equitable under the premises, are likewise prayed for.

Makati City for Coron, Palawan. May 15, 2023.


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*Solicitor General*

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*Public Defendant*

Office of the Mayor, Municipal Hall

Coron, Palawan

**ROBERTO B. MAGALLANES and  
JOSE B. MAGALLANES, JR.**

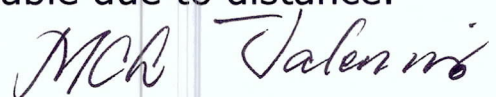
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**EXPLANATION**

The foregoing **Comment** is being filed and served by accredited courier service and electronic means, personal filing and service not being practicable due to distance.



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