Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

FCF MINERALS CORPORATION, Petitioner, -versus- **JOSEPH LUNAG, ALEXANDER SIMONGO, MAXIMO ALEJANDRO, JACQUELINE BUGNAY, PENNAN SOTERO, JONALYN SOTERO, MARINA SOTERO, VIRGINIA FABIA, MARLON BALANTE, WILLIAM BALANTE, JAMES SIMONGO, JOCELYN GUILLAO, GREGORIO OYANGWA, JOSIE GILLAO*, FELIX RAFAEL, JIMMY TANIZA, PATRICIO CULAY-ON, NAPOLEON NITAPAC, VICTOR CONDE, and RAMON BOLANSONG,** Respondents.	**G.R. No. 209440** Present: LEONEN, *J., Chairperson,* HERNANDO, INTING, DELOS SANTOS, and LOPEZ, J., *JJ.* **Promulgated:** February 15, 2021 Mis DC Bath

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DECISION

LEONEN, *J.*:

The remedy of Strategic Lawsuit Against Public Participation under the Rules of Procedure for Environmental Cases cannot be indiscriminately invoked by any defendant in an environmental case. It may only be invoked by individuals who became target of litigation due to their environmental advocacy. It is not a remedy of powerful corporations to stifle the actions of

* In some of the pleadings, Josie spelled her last name as "Guillao".

ordinary citizens who seek to make them accountable. More so, it is not a tool given to large concessionaires who have obligations and responsibilities under the law.

For this Court's resolution is a Petition for Review[1] assailing the Resolutions[2] of the Court of Appeals which dismissed the Petition for Issuance of the Writ of *Kalikasan* and Writ of Continuing Mandamus filed against FCF Mineral Corporation (FCF Mineral) for being a Strategic Lawsuit Against Public Participation and denied FCF Mineral's claim for damages.

FCF Mineral FCF Mineral is a domestic corporation engaged in mining. In 2009, it entered into a Financial or Technical Assistance Agreement (Agreement) with the Republic of the Philippines.[3] The Agreement granted FCF Mineral an exclusive right to explore, mine, and utilize minerals within a 3,093.51-hectare contract area in Barangay Runruno, Quezon, Nueva Vizcaya.[4]

In 2012, Joseph Lunag, et al. (Lunag, et al.), who claim to belong to the Ifugao, Kalanguya, and Cordillera Indigenous Cultural Communities,[5] filed a Petition for Issuance of the Writ of *Kalikasan* with Prayer for the Issuance of Environment Protection Order and Writ of Continuing Mandamus before this Court.[6] The petition was filed against the Secretary of Department of Environment and Natural Resources, the Director of the Mines and Geosciences Bureau, the National Commission on Indigenous Peoples, and FCF Mineral.[7]

Lunag, et al. questioned the open-pit mining method used by FCF Mineral.[8] They claimed that open-pit mining will destroy their ancestral land which embraces forest cover, watersheds, rice paddies, residential areas, burial grounds, and worship houses, among others.[9] They contended that FCF Mineral is excavating areas 50-100 meters away from their residential houses, exposing them to threats of landslide.[10]

Lunag, et al. further argued that the Agreement violates Section 19(f) of Republic Act No. 7942, otherwise known as the Philippine Mining Act, which prohibits mining within virgin forests, watershed, national parks, and bird sanctuaries.[11] Moreover, they asserted that the Indigenous Peoples'

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1 *Rollo*, pp. 14–40.
2 Id. at
3 Id. at 16.
4 Id.
5 Id. at 59.
6 Id. at 17, 59–81.
7 Id. at 17.
8 Id.
9 Id. at 65.
10 Id. at 66.
11 Id.

consent was fraudulently obtained because FCF Minerals did not disclose the extent of its mining activities and the environmental destruction it will cause.[12] In sum, Lunag, et al. sought the following reliefs:

> [1.] Upon filing of this petition, a Writ of *Kalikasan* shall be issued directing the defendants to file their respective returns and explain why they should not be sanctioned for causing or allowing the violation of the above environmental laws and regulations which would result into environmental damage of such magnitude as to prejudice the life, health or property of the inhabitants of the Provinces of Nueva Vizcaya, Quirino, and Isabela;
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> [2.] Upon filing of this petition, a Temporary Environmental Protection Order be issued stopping the mining operation of defendant FCF until the affected people in the area are relocated to safer grounds or until settlement agreements with them are in place;
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> [3.] For this Honorable Court to issue a writ of continuing mandamus commanding as follows:
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> a. For the DENR and MGB to review the mining method employed by FCF and come up with alternative methods or modes that is acceptable to the surrounding communities and less invasive to the ecological systems;
> b. For the DENR and MGB to review and amend the FTAA of FCF and remove therefrom all private properties within its coverage;
> c. For the NCIP to utilize its injunctive and prohibitory powers to enjoin operations of FCF in areas occupied by the indigenous peoples until they are relocated and fully compensated;
> d. For the NCIP to assist the affected ICCs in negotiating for the payment of their lands which were already been mined or threatened to be mined.[13]

In a Resolution,[14] this Court issued a Writ of *Kalikasan* and held in abeyance the issuance of the Temporary Environment Protection Order. The case was then referred to the Court of Appeals, Manila for the acceptance of the writ, hearing, reception of evidence, and rendition of judgment. The Secretary of Department of Environment and Natural Resources, the Director of the Mines and Geosciences Bureau, the National Commission on Indigenous Peoples, and FCF Mineral were ordered to make a verified return on the writ before the Court of Appeals. A portion of the resolution reads:

> WHEREAS, a Petition for a Writ of *Kalikasan* with Prayer for the Issuance of Environment Protection Order and Writ of Continuing Mandamus was filed by the petitioners;
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> WHEREAS, the petition appears to be sufficient in form and substance;

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12 Id. at 68.
13 Id. at 70–71.
14 Id. at 500–502.

> WHEREAS, considering the allegation contained, the issues raised and the arguments adduced in the petition, the Court finds it necessary and proper to
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> (a) ISSUE a WRIT OF *KALIKASAN* against the respondents;
> (b) REFER this case to the COURT OF APPEALS – MANILA for acceptance of the writ and for hearing, reception of evidence and rendition of judgment;
> (c) ORDER the respondents to make a VERIFIED RETURN of the Writ of *Kalikasan* before the Court of Appeals – Manila within a NON-EXTENDIBLE period of ten (10) days from receipt hereof as provided in Section 8 of Rule 7 of the Rules of Procedure for Environmental Cases; and
> (d) HOLD IN ABEYANCE the issuance of a Temporary Environment Protection Order.[15]

In its Return,[16] FIC Mineral alleged that the petition filed against it was a Strategic Lawsuit Against Public Participation (SLAPP).[17] It pointed out that the petition failed to show evidence of environmental damage that would justify the issuance of the Writ of *Kalikasan*.[18] Moreover, it claimed that it complied with the provision of the Agreement.[19] It stressed that it was granted an Environment Compliance Certificate, and it filed its Declaration of Mining Project Feasibility, which was approved by the Department of Environment and Natural Resources.[20]

Further, FCF Mineral argued that it is still in the development and construction phase and has yet to commence mining operations, contrary to Lunag, et al.'s allegations.[21] It likewise alleged that the mining method it will use will not cause environmental damage[22] as open-pit mining is not prohibited and is the only viable option that will not cause environmental damage to the contract area.[23] Further, it denied that the contract area is within any wildlife or protected area as certified by the Mines and Geosciences Bureau's Memorandum.[24]

FCF Mineral also asserted that it complied with the Mining Act and the Indigenous Peoples' Rights Act.[25] It denied that the contract area overlapped with the ancestral domain of Lunag, et al., as evidenced by the Certificates of Non-Overlap issued by the National Commission on Indigenous Peoples.[26] It

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15 Id. at 501.
16 Id. at 504–588.
17 Id. at 17.
18 Id. at 504–505.
19 Id. at 505.
20 Id. at 508.
21 Id. at 509.
22 Id. at 511.
23 Id. at 512–520.
24 Id. at 521.
25 Id. at 536.
26 Id. at 537–539.

likewise pointed out that Lunag, et al. are not Indigenous Peoples of Nueva Vizcaya, but are merely migrants into the area.[27]

FCF Mineral averred that the precautionary principle does not apply because there is no threat to human life or health, inequity to present or future generations or prejudice to the environment.[28]

The Department of Environment and Natural Resources, Mines and Geosciences Bureau, and National Commission on Indigenous Peoples, through the Office of the Solicitor General, likewise submitted a consolidated return on the writ.[29] They argued that Lunag, et al.'s petition must be denied for not stating a cause of action.[30] They aver that there was nothing in the petition which shows how they impaired, breached, or transgressed the rights of Lunag, et al.[31] It was not also claimed that they have been remiss in the performance of their duties.[32]

The government agencies likewise submitted a Field Report Memorandum which showed that there were no violations of environmental law within the contract area.[33] They stressed that Lunag, et al.'s allegations were not supported by any evidence.[34]

Further, they alleged that the Agreement does not include areas declared closed to mining pursuant to the Philippine Mining Act and National Integrated Protected Areas System.[35] As provided in the Agreement, the contract area granted to FCF Mineral is a parcel of the Magat River Forest Reserve, which was declared open for mineral exploration in 1999.[36]

Moreover, they claimed that the free and prior informed consent of Lunag, et al. is not required because the contract area is not an ancestral domain.[37] They alleged that there is no truth to Lunag, et al.'s claim that a free and prior informed consent was obtained from them. In fact, FCF Mineral did not even solicit this consent from Lunag, et al.[38]

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27 Id. at 543–544.
28 Id. at 567.
29 Id. at 595–634.
30 Id. at 609–611.
31 Id. at 611.
32 Id.
33 Id. at 612.
34 Id. at 614.
35 Id. at 615–618.
36 Id. at 618–619.
37 Id. at 619–620.
38 Id. at 621.

They further disputed Lunag, et al.'s claim that they are part of Indigenous Cultural Communities as the only known ancestral settlers in Nueva Vizcaya are in Kasibu, which is miles away from the contract area.[39]

FCF Mineral[40] and the Office of the Solicitor General then filed their respective Omnibus Motions praying for the conduct of a hearing.[41] In its motion, FCF Mineral alleged that Lunag, et al. admitted that they are unlicensed small-scale miners who were affected by FCF Mineral's mining activities. Thus, it claimed that the petition filed by Lunag, et al. was only intended to extort money from FCF Mineral.[42]

In its Resolution, the Court of Appeals denied the issuance of a Temporary Environmental Protection Order;[43] thus:

> WHEREFORE, in light of all the foregoing, petitioners' prayer for the issuance of a Temporary Environmental Protection Order is hereby DENIED for lack of merit.
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> SO ORDERED.[44]

The Court of Appeals ruled that the matter is not of extreme urgency and that there is no grave injustice and irreparable injury that would be suffered if the Order is not issued.[45]

On March 20, 2013, a hearing was conducted but Lunag, et al. failed to appear and file an Answer.[46] The Court of Appeals allowed FCF Mineral to present its witnesses and documentary exhibits.[47] The continuance of the hearing was set on April 19, 2013 to allow Lunag, et al. to present their evidence, but they still failed to appear.[48] The Court of Appeals then required the parties to submit their respective Memorandum.[49]

In its Memorandum, FCF Mineral prayed for damages in the form of lost time due to the preparation for the case as well as lawyer's fees.[50] It allegedly lost ₱3,250,700.00 in management time,[51] paid ₱3,564,455.00 to

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39 Id. at 622
40 Id. at 765–768.
41 Id. at 17.
42 Id. at 765.
43 Id. at 779–783. The Resolution dated March 1, 2013 in CA-G.R. SP No. 00018 was penned by Associate Justice Sesinando E. Villon, and concurred in by Associate Justice Florito S. Macalino and Associate Justice Eduardo B. Peralta, Jr. of the Court of Appeals, Manila, Former Seventeenth Division.
44 Id. at 783.
45 Id. at 17, 782.
46 Id. at 17.
47 Id.
48 Id. at 44.
49 Id. at 17.
50 Id. at 800.
51 Id.

hire a counsel to which it still owes a balance of at least ₱6,000,000.00.[52] It also paid ₱520,000.00 to Aero Eye Asia to conduct aerial and ground photography to gather evidence.[53]

In its Resolution,[54] the Court of Appeals dismissed Lunag, et al's petition for the issuance of Writs of Kalikasan and Continuing Mandamus.[55] The dispositive portion reads:

> WHEREFORE, in light of all the foregoing, this petition for the issuance of the Writ of Kalikasan and the Writ of Continuing Mandamus is hereby DISMISSED.
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> SO ORDERED.[56]

The Court of Appeals ruled that Lunag, et al. did not file the petition due to genuine concern for the environment, but for self-serving reasons.[57] It cited their admission that they are small-scale miners who operated within the contract area without permit.[58]

The appellate court relied on the report of the Community Environment and Natural Resources Office Task Force (Task Force), which conducted an on-site investigation in the contract area. The Task Force found that FCF Mineral was not violating any environmental law and that the environmental damage alleged by Lunag, et al. are actually attributable to small-scale mining activities.[59]

Moreover, the Court of Appeals ruled that Lunag, et al. failed to allege any cause of action in the petition and how the government agencies reneged on their duties.[60] It held that the prayer for the issuance of a Writ of Continuing Mandamus cannot be an auxiliary remedy to the Writ of *Kalikasan* because these are separate and distinct special civil actions.[61]

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52 Id. at 801.
53 Id.
54 Id. at 43–51. The May 24, 2013 Resolution in CA-G.R. SP No. 00018 was penned by Associate Justice Sesinando E. Villon, and concurred in by Associate Justice Florito S. Macalino and Associate Justice Eduardo B. Peralta, Jr. of the Court of Appeals, Manila, Former Seventeenth Division.
55 Id. at 18.
56 Id. at 51.
57 Id. at 46.
58 Id.
59 Id. at 46–47.
60 Id. at 48.
61 Id. at 48–50.

Nevertheless, the Court of Appeals denied FCF Mineral's prayer for actual and exemplary damages for lack of basis.[62] FCF Mineral moved for reconsideration of the resolution, but it was denied.[63]

In denying the motion for reconsideration, the Court of Appeals reiterated that there was no competent proof to justify the grant of actual damages.[64] Moreover, it held that awarding damages would go against the purpose of the anti-SLAPP rule as it would foil the exercise of freedom of speech and petition for redress of grievances.[65] It reasoned that the award of damages would be an instrument of coercion and retaliation, which would effectively discourage legitimate environmental cases.[66]

It also denied FCF Mineral's prayer for attorney's fees considering Lunag, et al's lack of financial capacity.[67]

Thus, FCF Mineral filed this Petition, arguing that it is entitled to actual damages and attorney's fees in the total sum of ₱10,774,309.00.[68]

Petitioner cites Rule 6, Section 4 of the Rules of Procedure for Environmental Cases which allows the award of damages, attorney's fees, and costs of suit when the case is dismissed for being a SLAPP.[69] It also anchors its claim on Article 2199 of the Civil Code which provides that actual damages may be awarded for pecuniary loss duly proved.[70]

It asserts that it offered adequate proof of actual damages when it submitted judicial affidavits and receipts evidencing the expenses.[71] Petitioner stresses that it submitted eight authentic vouchers, official receipts, computation of losses, and judicial affidavits explaining and justifying the costs it incurred.[72]

Petitioner states that it attached documents to the Supplemental Judicial Affidavit showing that it spent ₱10,774,309.00 to defend itself in the suit.[73] It also presented a certification which provides the valuation of management time lost by its offices from November 5, 2012 to February 20, 2013, equivalent to ₱3,250,700.00, as well as receipts covering legal fees in the

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62 Id. at 50–51.
63 Id. at 54–57. The October 4, 2013 Resolution was penned by Associate Justice Sesinando E. Villon, and concurred in by Associate Justice Florito S. Macalino and Associate Justice Eduardo B. Peralta, Jr. of the Court of Appeals, Manila, Former Seventeenth Division.
64 Id. at 55.
65 Id. at 56.
66 Id.
67 Id.
68 Id. at 19–20.
69 Id. at 20.
70 Id. at 23.
71 Id.
72 Id.
73 Id. at 25.

amounts of ₱3,564,455.00 and ₱3,439,854.00.[74] Lastly, it attached a statement of account for the aerial mapping services provided by Aero Eye Asia amounting to ₱520,000.00.[75] According to the petitioner, these pieces of evidence refute the appellate court's finding that there was no competent proof of the actual damages it incurred.[76]

In addition to actual damages, petitioner claims that exemplary damages must be awarded to it under Article 2229 of the Civil Code. It further claims that it is entitled to attorney's fees and costs as actual damages under Article 2208 of the Civil Code.[77]

Petitioner further argues that the award of damages in a SLAPP case is not a contravention of freedom of speech and the right to petition government for redress of grievances.[78] Petitioner reiterates that the award of damages in dismissal of actions on the grounds of SLAPP is sanctioned by the Rules of Procedure for Environmental Cases.[79]

Petitioner argues that the Court of Appeal's reliance on the United States cases of *Varian Medical Systems, Inc. v. Delfino* and *1-800 Contacts, Inc. v. Steinberg* in explaining the rationale of SLAPP is misplaced.[80] Unlike this case, the allegations of SLAPP in *Varian Medical Systems, Inc.* and *1-800 Contacts, Inc.*'s were rejected. Further, the special motion to strike under the California Anti-SLAPP Law cited in these cases provide for the recovery of attorney's fees and costs.[81] Petitioner also claims that there was nothing in these cases which show how an award for damages defeats the constitutional rights of freedom of speech and petition for redress of grievances.[82]

Petitioner avers that the chilling effect referred to in the Rules of Procedure for Environmental Cases describes the consequence of legal suits brought against persons who assert their environmental rights and privileges.[83]

Moreover, petitioner alleges that it faithfully complied with the terms of the Agreement and environmental laws while respondents only used the petition as an instrument of harassment.[84] This is allegedly evidenced by respondents' demand of ₱1,000,000,000.00 from petitioner in exchange of the free use of the area where they illegally conduct small-scale mining.[85]

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74 Id.
75 Id.
76 Id.
77 Id. at 26.
78 Id.
79 Id.
80 Id. at 27.
81 Id. at 28–29.
82 Id. at 28.
83 Id.
84 Id. at 30.
85 Id. at 30–31.

Petitioner argues that if its prayer for damages will be denied, bogus actions similar to the respondents' petition will not be deterred as intended by the rules.[86]

Lastly, petitioner argues that this Court has jurisdiction to resolve this petition even if it raises factual questions.[87] Petitioner submits that this petition falls under the following recognized exceptions: (1) inference made is manifestly mistaken; (2) the findings of fact are conclusions without citation of specific evidence; and (3) the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[88] It contends that the appellate court's conclusion that it failed to substantiate its claims for damages is clearly contradicted by the several documentary evidence it submitted.[89]

This Court required the respondents to file their Comment.[90] However, despite several orders and imposition of fine, respondents failed to comply.[91] Thus, the filing of the respondents' Comment was dispensed with.[92]

The sole issue for this Court's resolution is whether or not the action respondents filed against petitioner constitutes a Strategic Lawsuit Against Public Participation.

A Strategic Lawsuit Against Public Participation[93] or SLAPP generally refers to claim suits filed against private individuals as a retaliation to the latter's recourse to the government on an issue of public concern. SLAPP actions do not forward any genuine cognizable interest but are only used to oppose and to suppress the defendants' political activities.[94]

The concept of SLAPP is of foreign origin. The term was first coined by American legal sociologists George Pring and Penelope Canan in the late 1980s. At that time, they observed a proliferation of damages suits used by deep-pocketed individuals and corporations against citizens who participate in public issues.[95] They concluded that these cases called SLAPP derail

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86 Id. at 32.
87 Id. at 33.
88 Id.
89 Id. at 33–34.
90 Id. at 935–936.
91 Id. at 937–938, 944–945, 948–949, 952–953, 955–956, 962–963.
92 Id. at 966–967.
93 Also called Strategic Legal Action Against Public Participation.
94 George W. Pring, et al., *SLAPPS: Strategic Lawsuits Against Public Participation,* 7 Pace Environmental Law Review, 4 (1989).
95 Penelope Canan, et al., *Studying Strategic Lawsuits against Public Participation: Mixing Quantitative and Qualitative Approaches,* 22 LAW AND SOCIETY REVIEW, 385 (1988); *see* also Thalia Anthony, *Quantum of strategic litigation - quashing public participation,* 14(2) AUSTRALIAN JOURNAL OF HUMAN RIGHTS, 3 (2009).

public participation by intimidating defendants and drying up their resources.[96]

Pring and Canan have described the development of SLAPP suits into three stages.[97]

First, a citizen addresses the government on a matter of public concern. The citizen espouses a view contrary to that of another individual or group, who is inevitably threatened by the citizen's actions because this undermines their interest, which is often monetary.

Second, those threatened by the communication to the government will file a case to intimidate the citizen, who, in turn, is compelled to spend time and money to defend themselves. Third, the defendant-citizen must raise the defense that their communication to the government was constitutionally-protected.[98]

In the process, the plaintiff in a SLAPP suit uses the judicial process to silence the defendant. Pring and Canan remarked that SLAPP filers were able to use the courts and judicial processes as leverage against ordinary citizens.

> These suits are not ordinary because they do not use the courts as an end in themselves, as a normal decision-making body. Rather, they use court leverage to empower one side of a political dispute and to transform it, unilaterally. You may think you are speaking out against a city zoning permit for an unwanted toxic waste dump in your town. Then, suddenly, "city hall" becomes "courtroom"; "zoning" becomes "slander"; "permit denial" becomes "$1,000,000 in damages." The magic wand of a SLAPP has conjured you away from the place where your issue could be resolved, completely changed what issues can be discussed, and increased the stakes with a wholly unexpected monetary risk. Normally thought of as the protectors of constitutional and political rights, courts are being used, in SLAPPs, to transform public political disputes into private judicial disputes, to the unfair advantage of one side and the disadvantage of the other.[99]

Regardless of the result of the SLAPP suit, the plaintiff's goal is achieved once damage and hardship are caused to the defendant who was forced to participate in a litigious process.[100] As a result, SLAPP suits not

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96 Thalia Anthony, *Quantum of strategic litigation - quashing public participation*, 14(2) Australian Journal of Human Rights, 3 (2009).

97 George W. Pring, et al., *SLAPPS: Getting Sued for Speaking Out*, 10 (1st ed., 1996); Alice Glover, et al., *SLAPP Suits: A First Amendment Issue and Beyond*, 21 NORTH CAROLINA CENTRAL LAW REVIEW, 124 (1995).

98 Id.

99 George W. Pring, et al., *SLAPPS: Getting Sued for Speaking Out*, 29 (1st ed., 1996).

100 J. Reid Mowrer, *Protection of the Public Against Litigious Suits ("PPALS"): Using 1993 Federal Rule 11 to Turn SLAPPs Around*, 38 NATURAL RESOURCES JOURNAL, 466–467 (1998).

only silence defendants for engaging in political activities, they also create a chilling effect by discouraging everyone else from doing the same.[101]

> It is this political retaliation, through the law, that distinguishes SLAPP suits from the commonly observed intimidation and retaliation through litigation between commercial competitors, business partners, labor and management, and regulatory agencies and licensees. Strategic lawsuits against public participation, on the other hand, claim injury from citizen efforts to influence a government body or the electorate on an issue of public significance.[102]

Due to the costly nature of SLAPP suits, it is common that its filers are corporations or individuals who have the monetary resources to initiate and to sustain litigation.[103] SLAPP suits are known for the apparent disproportionate power between the filer and the target. Often, the plaintiff has deep pockets and can afford prolonged litigation, while the defendant is an ordinary citizen whose financial resources can easily be depleted.[104]

To resist these types of suits, a counterclaim or countersuit for damages called a SLAPP-back may be instituted by the SLAPP suit target. Pring and Canan argued that there are a number of legal grounds for a SLAPP-back, such as violation of constitutional rights, violation of civil rights statutes, abuse of process, and malicious prosecution and other tort.[105]

Earlier SLAPP-back or anti-SLAPP laws were crafted based on the First Amendment of the United States Constitution, which recognizes the people's right to free speech and right to petition the government to redress grievances of public matter.[106] At the core of anti-SLAPP laws is the protection of free expression, press and assembly, which are fundamental principles of liberty and justice and "among the most precious of the liberties guaranteed by the Bill of Rights."[107] Thus:

> SLAPP suits are fundamentally different from other types of lawsuits because they seek to stifle legitimate political expression. The potential ramifications of these SLAPP suits demand special attention because they

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101 Id. at 469.

102 Alice Glover, et al., *SLAPP Suits: A First Amendment Issue and Beyond,* 21 NORTH CAROLINA CENTRAL LAW REVIEW, 126 (1995).

103 Douglas W. Vick, et al., *Public Protests, Private Lawsuits, and the Market: The Investor Response to the McLibel Case,* 28 JOURNAL OF LAW AND SOCIETY, 207 (2001).

104 Katelyn E. Saner, *Getting SLAPP-ed in Federal Court: Applying State Anti-SLAPP Special Motions to Dismiss in Federal Court After Shady Grove,* 63 DUKE LAW JOURNAL, 789 (2013); George W. Pring, et al., *SLAPPS: Getting Sued for Speaking Out,* 40 (1st ed., 1996).

105 George W. Pring, et al., *SLAPPS: Strategic Lawsuits Against Public Participation,* 7 PACE ENVIRONMENTAL LAW REVIEW, 28 (1989).

106 Id. at 88, *citing* the First Amendment of the United States Constitution, which provides:
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

107 George W. Pring, et al., *SLAPPS: Strategic Lawsuits Against Public Participation,* 7 PACE ENVIRONMENTAL LAW REVIEW, 10 (1989).

> represent an attack on the first amendment rights which are at the heart of our democracy.
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> . . . .
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> [C]itizens are legally guaranteed the right to intervene in land use and zoning decisions, and that their active participation is absolutely crucial to our goal of protecting the environment. First and foremost, the United States Constitution establishes the right of every American to petition the government for the redress of grievances, a principle which certainly applies to citizen participation in government decision on planning issues.[108]

SLAPP suits go against these fundamental liberties because they intend to stifle democratic participation. Thus:

> So the petitioner clause, indeed our entire political system recognizes that the "word of the represented" is essential to the way government shapes our lives. Further, the right is not dependent on whether the citizens' views are right or wrong, wise or foolish, public-spirited or venally self-interested. Implicit in this concept is a very modern view of the superior competitiveness of truth in a free market of ideas. As Justice Holmes stated in one of his famous dissents, destined to become the law: "[T]he ultimate good desired is better reached by free trade in ideas [and] the best test of trust is the power of the thought to get itself accepted in the competition of the market...That at any rate is the theory of our Constitution."
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> SLAPPs are a contradiction of these fundamental principles, as they are a counter-attack against petition-clause-protected activity.[109]

SLAPP suits emerged in 1970s at the time of development boom in urban areas. SLAPPs were filed by property developers who are at odds with local community groups opposing the land developments.[110] Pring and Canan likewise noted that SLAPP is frequently used in suits involving environmental and land use issues. Most common examples of SLAPP suits are by land developers who file cases against local residents who are opposing the development.[111]

Nevertheless, anti-SLAPP statutes were not only applied to environmental concerns, but to any matter arising from participation in political activities.[112] Initial cases of SLAPP in the United States involve

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[108] Robert Abrams, *Strategic Lawsuits Against Public Participation (SLAPP) Address*, 7 PACE ENVIRONMENTAL LAW REVIEW, 33–34 (1989).

[109] George W. Pring, et al., *SLAPPS: Strategic Lawsuits Against Public Participation,* 7 PACE ENVIRONMENTAL LAW REVIEW, 11–12 (1989).

[110] George W. Pring, et al., *SLAPPS: Getting Sued for Speaking Out*, 30–45 (1st ed., 1996); Thalia Anthony, *Quantum of strategic litigation - quashing public participation*, 14(2) AUSTRALIAN JOURNAL OF HUMAN RIGHTS, 4 (2009).

[111] George W. Pring, et al., *SLAPPS: Strategic Lawsuits Against Public Participation,* 7 PACE ENVIRONMENTAL LAW REVIEW, 7 (1989); Alice Glover, et al., *SLAPP Suits: A First Amendment Issue and Beyond,* 21 NORTH CAROLINA CENTRAL LAW REVIEW, 123 (1995).

[112] George W. Pring, et al., *SLAPPS: Strategic Lawsuits Against Public Participation,* 7 PACE ENVIRONMENTAL LAW REVIEW, 5 (1989); J. Reid Mowrer, *Protection of the Public Against Litigious*

citizens being sued for reporting law violations, writing to government officials, attending and testifying before public hearings, lobbying, filing protests, and participating in demonstrations.[113]

These political retaliation cases were not categorically labelled as SLAPP. Instead, they are often masked as conventional torts, such as defamation and business interference.[114] Thus, to determine if a suit is a SLAPP, Professor Pring and Canan provided indicia that the courts may look for in a defendant and plaintiff in a suspect SLAPP suit. Thus:

> SLAPPs normally do not advertise themselves as such. Filers do not usually use people for "exercising their First Amendment rights" or "petitioning the government" or "speaking out politically." Instead, to gain and maintain access to the court, filers must recast or camouflage the targets' political behavior as common personal injuries or legal violations. They need to mask the nature of the dispute and present it as personal and legal, not public and political.
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> Two litmus tests can determine whether a case is a SLAPP: defendants' actions, and plaintiffs' claims.
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> 1. Defendants' actions: To begin with, exactly what activities of defendant-targets are described in the fact section of the filer's complaint? Do any of those activities involve communicating with government officials, bodies, or the electorate, or encouraging others to do so? Are government hearings, complaints, appeals, letters, reports, or filings mentioned? If so, the case is a SLAPP. Even if no government-connected actions are mentioned, however, one must ask: Are targets politically active citizens and groups? Are they involved in speaking out for or against some issue under consideration by some level of government or the voters? If so, there is a high likelihood that a suit against them is a disguised SLAPP, regardless of the facts alleged.
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> 2. Plaintiffs' claims: SLAPPs repeatedly use six very predictable tort or other legal categories to mask their real purpose. They are, in order of frequency, (1) defamation, (2) business torts, (3) conspiracy, (4) judicial or administrative process violations, (5) violation of constitutional or civil rights, and (6) other violations (nuisances, trespass, invasion of privacy, outrageous conduct, falsifying tax-exempt status, and so on). If any of these categories are specified, suspect a SLAPP.[115]

The application of SLAPP was meant to be broad and encompassing. As Pring and Canan described, SLAPP only requires that the communication to the government is an issue of public interest or concern. Thus, to constitute SLAPP, they proposed that the following elements must be present:

Suits ("PPALS"): Using 1993 Federal Rule 11 to Turn SLAPPs Around, 38 NATURAL RESOURCES JOURNAL, 471 (1998).

113 George W. Pring, et al., *SLAPPS: Strategic Lawsuits Against Public Participation,* 7 PACE ENVIRONMENTAL LAW REVIEW, 5 (1989).

114 Id. at 7.

115 George W. Pring, et al., *SLAPPS: Getting Sued for Speaking Out,* 150–151 (1st ed., 1996).

1. a civil complaint or counterclaim (for monetary damages and/or injunction);
2. filed against non-governmental individuals and/or groups;
3. because of their communications to a government body, official, or the electorate; and
4. on an issue of some public interest or concern.[116]

Before anti-SLAPP state laws were enacted, the Federal Rules in United States already provided mechanisms to combat SLAPP cases. While it was not crafted with SLAPP suits in mind, Rule 11 of the 1937 Federal Rules of Civil Procedure deterred abuse of judicial processes, including SLAPPs. The rule required the lawyer's signature to certify that he or she has read the pleading and held a good faith belief that there is good ground to support it.[117]

As civil cases flooded the courts in the late 1970s, Rule 11 was amended in 1983 to amplify its deterrent effect by defining the appropriate standard of lawyer's conduct and broadening sanctions. However, this led to the growth of sanctions litigation at the expense of free access to the courts.[118] The amended rule was rarely invoked due to its "soft standards and meaningless sanctions." To show that the case was sham and false, the subjective bad faith of the plaintiff must be proven in court. Even if the conditions are met, the imposition of sanctions was discretionary.[119] A subsequent amendment in 1993 broadened the scope of sanctioned activities but applied greater constraints on the imposition of penalties.[120]

In the late 1980s, the proliferation of SLAPP suits has caught the attention of various states in America. As a response, several states began adopting legal reforms to deter the filing of SLAPP suits.[121] There are variations of anti-SLAPP legislation across different states and the scope of each laws differ. Nevertheless, these statutes are consistently applied to causes of action involving the Constitutional right to free speech and petition to redress grievances.

In 1989, the Washington State is the first state to enact an anti-SLAPP law. Under the Revised Code of Washington, a person who communicates to the government is immune from civil liability for claims based upon the

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[116] George W. Pring, et al., *SLAPPS: Strategic Lawsuits Against Public Participation,* 7 PACE ENVIRONMENTAL LAW REVIEW, 8 (1989).

[117] J. Reid Mowrer, *Protection of the Public Against Litigious Suits ("PPALS"): Using 1993 Federal Rule 11 to Turn SLAPPs Around,* 38 NATURAL RESOURCES JOURNAL, 476 (1998).

[118] J. Reid Mowrer, *Protection of the Public Against Litigious Suits ("PPALS"): Using 1993 Federal Rule 11 to Turn SLAPPs Around,* 38 NATURAL RESOURCES JOURNAL, 476–477 (1998); Theodore C. Hirt, *A Second Look at Amended Rule 11,* 48 AMERICAN UNIVERSITY LAW REVIEW, 1010 (1999).

[119] Gary J. Saalman, *Rule 11 in the Constitutional Case,* 63 NOTRE DAME LAW REVIEW, 791–792 (1988).

[120] J. Reid Mowrer, *Protection of the Public Against Litigious Suits ("PPALS"): Using 1993 Federal Rule 11 to Turn SLAPPs Around,* 38 NATURAL RESOURCES JOURNAL, 480 (1998).

[121] Douglas W. Vick, et al., *Public Protests, Private Lawsuits, and the Market: The Investor Response to the McLibel Case,* 28 JOURNAL OF LAW AND SOCIETY, 208 (2001).

communication to the agency or organization and is entitled to recover counterclaims.[122]

A few years later, the State of California passed a broader anti-SLAPP law which covers not only communications to government agencies, but also to any matter of public concern expressed in public. The anti-SLAPP provision found in Section 425.16 of the California Civil Code sought "to encourage participation in public interest matters and [to] avoid the chilling of such participation through abuse of judicial process."[123] The statute may be invoked to dismiss unmeritorious claims filed to interfere with valid exercise of free speech and petition for the redress of grievances. Other states

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[122] Revised Code of Washington: Title 4 Civil Procedure, sec. 4.24.500–4.24.520 provide:

Section 4.24.500. Good faith communication to government agency—Legislative findings—Purpose.

Information provided by citizens concerning potential wrongdoing is vital to effective law enforcement and the efficient operation of government. The legislature finds that the threat of a civil action for damages can act as a deterrent to citizens who wish to report information to federal, state, or local agencies. The costs of defending against such suits can be severely burdensome. The purpose of RCW 4.24.500 through 4.24.520 is to protect individuals who make good-faith reports to appropriate governmental bodies.

Section 4.24.510. Communication to government agency or self-regulatory organization—Immunity from civil liability.

A person who communicates a complaint or information to any branch or agency of federal, state, or local government, or to any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency, is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization. A person prevailing upon the defense provided for in this section is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense and in addition shall receive statutory damages of ten thousand dollars. Statutory damages may be denied if the court finds that the complaint or information was communicated in bad faith.

Section 4.24.520. Good faith communication to government agency—When agency or attorney general may defend against lawsuit—Costs and fees.

In order to protect the free flow of information from citizens to their government, an agency receiving a complaint or information under RCW 4.24.510 may intervene in and defend against any suit precipitated by the communication to the agency. In the event that a local governmental agency does not intervene in and defend against a suit arising from any communication protected under chapter 234, Laws of 1989, the office of the attorney general may intervene in and defend against the suit. An agency prevailing upon the defense provided for in RCW 4.24.510 shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense. If the agency fails to establish the defense provided for in RCW 4.24.510, the party bringing the action shall be entitled to recover from the agency costs and reasonable attorney's fees incurred in proving the defense inapplicable or invalid.

[123] California Code of Civil Procedure, sec. 425.16 provides:

(a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.

(b)(1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

....

(e) As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

such as Colorado, Indiana, Louisiana, Nevada, Oregon, and Oklahoma followed this broad model.[124]

Notably, other forms of anti-SLAPP law have a narrower model. For instance, Pennsylvania's anti-SLAPP statute may only be invoked with respect to enforcement of environmental law or regulation.[125]

Other countries also adopted their own anti-SLAPP statutes.

In Canada, SLAPP first gained attention in 1992 when MacMillan Bloedel Limited, a large multinational forestry corporation, filed an action against a local conservancy group. The corporation alleged that the conservancy group illegally conspired with the local government, which earlier enacted zoning by-laws that prevented the corporation from developing large-scale land holdings. Subsequently, the corporation decided to drop the case. In issuing the consent dismissal order, the Supreme Court of British Columbia ruled that the conservancy group may pursue examinations of the corporation in order to claim the award of damages.[126]

In the 1999 case of *Fraser v. Saanich*, the Canadian Court explicitly recognized a litigation as SLAPP. In that case, Ellen Fraser sought to redevelop a property in a residential neighborhood. However, the residents lobbied against it and subsequently, the local council enacted by-laws changing the zoning of the property, precluding the redevelopment. Fraser then sued the local council as well as the residents for negligence and interference with contractual relations, among others.[127]

In dismissing the suit, the Supreme Court of British Columbia held that Fraser's action is a SLAPP because it was clear that the claim of Fraser has no underlying reasonable cause of action and that it was merely an attempt "to stifle the democratic activities of the defendants."[128] The Canadian Court explained that these kinds of lawsuits cast a chilling effect on the public's participation in political and democratic processes. Thus:

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[124] *See* Colorado Revised Statutes, sec. 13-20-1101, Indiana Code sec. 34-7-7-1, Louisiana Code of Civil Procedure art. 971, Nevada Revised Statutes, sec. 41.635–41.670, Oregon Revised Statutes sec. 31.150–31.155, Oklahoma Citizens Participation Act, sec. 12–1430.

[125] Pennsylvania Consolidated Statutes, sec. 8302 provides:

Section 8302. Immunity. (a) General rule. — Except as provided in subsection (b), a person that, pursuant to Federal or State law, files an action in the courts of this Commonwealth to enforce an environmental law or regulation or that makes an oral or written communication to a government agency relating to enforcement or implementation of an environmental law or regulation shall be immune from civil liability in any resulting legal proceeding for damages where the action or communication is aimed at procuring favorable governmental action.

[126] Michaelin Scott, et al., *Strategic Lawsuits Against Public Participation: The British Columbia Experience*, 19 REVIEW OF EUROPEAN COMMUNITY & INTERNATIONAL ENVIRONMENTAL LAW, 47 (2010).

[127] Id. at 48.

[128] Id.

> While neighbourhood participation in municipal politics often places an almost adversarial atmosphere into land use questions, this participation is a key element to the democratic involvement of said citizens in community decision-making. Signing petitions, making submissions to municipal councils and even the organization of community action groups are sometimes the only avenues for community residents to express their views on land use issues.... This type of activity often produces unfavourable results for some parties involved. However, an unfavourable action by local government does not, in the absence of some other wrongdoing, open the doors to seek redress on those who spoke out in favour of that action. To do so would place a chilling effect on the public's participation in local government.[129]

At that time, several groups have been vocal for the passage of an anti-SLAPP legislation.[130] Finally, in 2001, the jurisdiction of British Columbia passed the Protection of Public Participation Act. The law seeks to "encourage public participation, and [to] dissuade persons from bringing or maintaining proceedings or claims for an improper purpose."[131] In SLAPP suits, the defendant may file an application to dismiss the case, claim reasonable costs and damages against the plaintiff.[132]

In 2015, Ontario also passed its own Protection of Public Participation Act which sought to encourage and promote participation on matters of public interest. Upon motion of a defendant, the court may dismiss the case if it is shown that "the proceeding arises from an expression made by the person... [which] relates to a matter of public interest."[133]

In Australia, a rise on the SLAPP suits filed by Australian corporations was seen in the 1990s following the same phenomenon in the United States

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129 Id.

130 Id at 49.

131 British Columbia Protection of Public Participation Act, Chapter 19, sec. 2 provides:
The purposes of this Act are to
(a) encourage public participation, and dissuade persons from bringing or maintaining proceedings or claims for an improper purpose, by providing
...
(b) preserve the right of access to the courts for all proceedings and claims that are not brought or maintained for an improper purpose.

132 British Columbia Protection of Public Participation Act, Chapter 19, sec. 5(2) provides:
(2) If, on an application brought by a defendant under section 4 (1), the defendant satisfies the court under subsection (1) of this section in relation to the proceeding or in relation to a claim within the proceeding,
(a) the defendant may obtain one or both of the following orders:
(i) an order dismissing the proceeding or claim, as the case may be;
(ii) an order that the plaintiff pay all of the reasonable costs and expenses incurred by the defendant in relation to the proceeding or claim, as the case may be, including all of the reasonable costs and expenses incurred by the defendant in pursuing rights or remedies available under or contemplated by this Act in relation to the proceeding or claim, and
(b) the court may, in addition to the orders referred to in paragraph (a), on its own motion or on the application of the defendant, award punitive or exemplary damages against the plaintiff.

133 Ontario Protection of Public Participation Act, sec. 137.1(3) which provides:
(3) On motion by a person against whom a proceeding is brought, a judge shall, subject to subsection, (4) dismiss the proceeding against the person if the person satisfies the judge that the proceeding arises from an expression made by the person that relates to a matter of public interest.

and Canada.[134] However, at that time, the Australian courts also have not explicitly recognized SLAPP suits.[135]

One of the notable SLAPP suit cases is *Gunns Ltd. v. Marr*. In 2004, Gunns Ltd., one of the largest logging company in Australia,[136] filed a claim for conspiracy, defamation, and economic interference against environmental activists and government officials seeking to protect Tasmania's forests.[137] It claimed that the defendants conspired with each other to disrupt its business, resulting to interference of contractual relations.[138]

After five (5) years, the Australian Court dismissed the case, ruling that Gunns Ltd.'s statement of claim failed to provide its statement of claim with sufficient clarity.[139] The Court held that the plaintiff failed to comply with Australia's RSC Rule 13.02(I)(a) which requires every pleading to contain a statement of all material facts upon which a party relies, as well as RSC rule 13.10(I) which states that a pleading must contain all necessary particulars of any fact of matter pleaded.[140]

It observed that the unintelligible claims in the complaint made it difficult for the defendants to respond to the allegations against them. The case was finally settled with Gunns Ltd. paying costs to the remaining defendants.[141]

While the Gunns case was pending, an anti-SLAPP law was enacted in Australia. Acknowledging SLAPP suits, the Protection of Public Participation Act 2008 sought "to protect public participation, and discourage certain civil proceedings that a reasonable person would consider [to] interfere with engagement in public participation."[142] Under this law, civil damages may be awarded if it is proven in court that "the defendant's conduct is public participation and the proceeding is started or maintained against the defendant for an improper purpose."[143]

In our jurisdiction, our anti-SLAPP rule is narrowly applied only to environmental cases. While there are provisions in our Civil Code against individuals who impair the exercise of free speech, right to peaceful assembly to petition the government, and freedom of access to courts, there is a lack of direct reference to SLAPP elsewhere in our legal system.[144]

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134 Thalia Anthony, *Quantum of strategic litigation - quashing public participation,* 14(2) AUSTRALIAN JOURNAL OF HUMAN RIGHTS, 4 (2009).
135 Id. at 13.
136 *Gunns Ltd. v. Marr,* 2009 VSC 284.
137 Id.
138 Id.
139 Id.
140 Id.
141 Id.
142 Australia Protection of Public Participation Act of 2008, sec. 5.
143 Australia Protection of Public Participation Act of 2008, sec. 9.
144 Civil Code, art. 32, sec. 2, 13, 19, which provides:

This Court incorporated an anti-SLAPP provision in the Rules of Procedure for Environmental Cases having in mind the proliferation of SLAPP suits on environmental concerns.[145] We have adopted the Oregon view that SLAPP suits may be invoked not only against the government but also against private parties.[146]

Similar to its precursors, the anti-SLAPP provision under the Rules is founded on the Constitutional rights to freedom of speech and expression, freedom of assembly, and the right to petition the government for redress of grievances.[147] Owing to its application to environmental concerns, the provision is also hinged on the Constitutional right to balanced and healthful ecology. Thus:

> Article III, Section 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.[148]
>
> Article II, Section 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.[149]

This Court adopted the defense of SLAPP to give ample protection to parties advocating environmental protection. In including an anti-SLAPP provision, this Court recognized the egregious reality that SLAPP suits are present in Philippine environmental law litigation and that these frivolous cases are being used to financially burden petitioning parties. Our anti-SLAPP remedy in the Rules aims to encourage public participation to forward environmental law as well as to deter the chilling effect of SLAPP litigation.[150]

Our Rules define SLAPP in the following sections:

Article 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

...

(2) Freedom of speech;

...

(13) The right to take part in a peaceable assembly to petition the Government for redress of grievances;

...

(19) Freedom of access to the courts.

In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence.

145 A.M. No. 09-6-8-SC, *Rationale to the Rules of Procedure for Environmental Cases,* p. 87.

146 Id. at 88–89.

147 A.M. No. 09-6-8-SC, *Annotation to the Rules of Procedure for Environmental Cases,* p. 130.

148 CONSTI., art. III, sec. 4.

149 CONSTI., art. II, sec. 16.

150 A.M. No. 09-6-8-SC, *Rationale to the Rules of Procedure for Environmental Cases,* pp. 87–88.

RULE 1

Section 4. Definition of Terms.

...

(g) Strategic Lawsuit Against Public Participation (SLAPP) refers to an action whether civil, criminal or administrative, brought against any person, institution or any government agency or local government unit or its officials and employees, with the intent to harass, vex, exert undue pressure or stifle any legal recourse that such person, institution or government agency has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights.[151]

RULE 6

Strategic Lawsuit Against Public Participation

Section 1. Strategic Lawsuit Against Public Participation (SLAPP). — A legal action filed to harass, vex, exert undue pressure or stifle any legal recourse that any person, institution or the government has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights shall be treated as a SLAPP and shall be governed by these Rules.[152]

The anti-SLAPP provision applies to harassment suits for damages filed against persons as retaliation for the latter's recourse on environmental concerns. These actions do not forward any genuine cognizable interest but are only used to oppose the resolution of environmental actions.[153]

In *Mercado v. Lopena*, this Court emphasized that SLAPP "is set up as a defense in those cases claimed to have been filed merely as a harassment suit against environmental actions." SLAPP is a privilege provided in procedural rules. Thus, to properly put up this defense, it must be invoked in the same action and before the same court.[154]

In a SLAPP suit involving environmental laws and rights, a defendant must raise the affirmative defense of SLAPP along with the supporting evidence and pray for damages by way of counterclaim. Under Rule 6, Section 2 of the Rules:

Section 2. SLAPP as a defense; how alleged. – In a SLAPP filed against a person involved in the enforcement of environmental laws, protection of the environment, or assertion of environmental rights, the defendant may file an answer interposing as a defense that the case is a SLAPP and shall be

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151 A.M. No. 09-6-8-SC, Rule 1, sec. 4(g).
152 A.M. No. 09-6-8-SC, Rule 6, sec. 1.
153 A.M. No. 09-6-8-SC, *Annotation to the Rules of Procedure for Environmental Cases*, p. 87.
154 *Mercado v. Lopena*, G.R. No. 230170, June 6, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64395> [Per J. Caguioa, Second Division].

> supported by documents, affidavits, papers and other evidence; and, by way of counterclaim, pray for damages, attorney's fees and costs of suit.
>
> The court shall direct the plaintiff or adverse party to file an opposition showing the suit is not a SLAPP, attaching evidence in support thereof, within a non-extendible period of five (5) days from receipt of notice that an answer has been filed.
>
> The defense of a SLAPP shall be set for hearing by the court after issuance of the order to file an opposition within fifteen (15) days from filing of the comment or the lapse of the period.[155]

In alleging the defense of SLAPP, the following conditions must concur: (1) the defendant has taken or may take a legal recourse in the enforcement of environmental laws, protection of the environment, or assertion of environmental rights; (2) a legal action is filed against this person, whether civil, criminal, or administrative; and (3) the action was filed to harass, vex, exert due pressure, or stifle the legal recourse of the defendant.[156]

Since a motion to dismiss is prohibited in environmental cases,[157] SLAPP may be raised as an affirmative defense by the defendant in its answer. The defendant may likewise pray for damages, attorney's fees, and costs of suit by way of counterclaim.[158] When the defense of SLAPP is raised, the plaintiff is ordered to file an opposition to show that it is not.[159]

The hearing on the defense of a SLAPP is summary in nature and the defendant must show that its acts for enforcement of environmental law is a legitimate action for the protection, preservation, and rehabilitation of the environment. On the other hand, the plaintiff must prove by preponderance of evidence that the action is valid, and not a SLAPP.[160]

When the action is dismissed for being a SLAPP, the court may award damages, attorney's fees, and costs of suit in favor of the defendant.[161] To deter parties from filing SLAPP, the rules allow the award of compensatory and punitive damages, reasonable costs, and attorney's fees to defendants.

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155 A.M. No. 09-6-8-SC, Rule 6, sec. 2.

156 A.M. No. 09-6-8-SC, Rule 1, sec. 4(g).

157 A.M. No. 09-6-8-SC, Rule 2, sec. 2(a) provides:
Section 2. Prohibited Pleadings or Motions. — The following pleadings or motions shall not be allowed:
(a) Motion to dismiss the complaint;

158 A.M. No. 09-6-8-SC, Rule 6, sec. 2.

159 Id.

160 A.M. No. 09-6-8-SC, Rule 6, sec. 3 provides:
Section 3. Summary hearing. — The hearing on the defense of a SLAPP shall be summary in nature. The parties must submit all available evidence in support of their respective positions. The party seeking the dismissal of the case must prove by substantial evidence that his act for the enforcement of environmental law is a legitimate action for the protection, preservation and rehabilitation of the environment. The party filing the action assailed as a SLAPP shall prove by preponderance of evidence that the action is not a SLAPP and is a valid claim.

161 Id.

The award of these costs will not only disincentivize SLAPP, but it will also defray the costs of excess litigation.[162]

Here, petitioner alleges that the Petition for Writ of *Kalikasan* filed by respondents is a SLAPP. It contends that the petition constitutes tortious interference in relation to the implementation of its mining contract.[163] Petitioner argues that it fully complied with the terms of the Agreement as well as the provisions of the Philippine Mining Act, National Integrated Protected Areas System Act, and Indigenous Peoples' Rights Act.[164]

Petitioner claims that respondents are illegal small-scale miners who are adversely affected by its mining operations.[165] It further points out that the respondents referred to another company named Oceana in the petition, indicating that their grievances were directed against a different mining corporation.[166]

We deny the petition.

The application of our SLAPP-back rules must be done with a thorough understanding of its underlying rationale and policy, lest we condone the very evil that the rule intended to address.

Anti-SLAPP is a legal remedy given to ordinary citizens who are exercising their constitutional rights of free speech and petition for redress to the government. At its core, SLAPP-backs are intended as a tool to address lawsuits designed to squelch the people's exercise of basic constitutional rights. It is not a blanket provision which may be invoked in any event.

The innovation of SLAPP-back rests on the people's constitutional right to free expression and petition clause. In the earlier case of *Phil. Blooming Mills Employees Organization v. Phil. Blooming Mills Co., Inc.*, this Court has settled that these rights enjoy a position of primacy within our constitutional sphere. Thus:

> While the Bill of Rights also protects property rights, the primacy of human rights over property rights is recognized. Because these freedoms are "delicate and vulnerable, as well as supremely precious in our society" and the "threat of sanctions may deter their exercise almost as potently as the actual application of sanctions," they "need breathing space to survive," permitting government regulation only "with narrow specificity."

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162 A.M. No. 090-6-8-SC, *Rationale to the Rules of Procedure for Environmental Cases*, p. 94–95.
163 *Rollo*, p. 21.
164 Id.
165 Id.
166 Id.

> Property and property rights can be lost thru prescription; but human rights are imprescriptible. If human rights are extinguished by the passage of time, then the Bill of Rights is a useless attempt to limit the power of government and ceases to be an efficacious shield against the tyranny of officials, of majorities, of the influential and powerful, and of oligarchs - political, economic or otherwise.
>
> In the hierarchy of civil liberties, the rights of free expression and of assembly occupy a preferred position as they are essential to the preservation and vitality of our civil and political institutions; and such priority "gives these liberties the sanctity and the sanction not permitting dubious intrusions."[167]

These "fundamental personal rights of the people"[168] are indispensable to a functional democratic society. In *Bayan v. Ermita*:[169]

> [T]he right to peaceably assemble and petition for redress of grievances is, together with freedom of speech, of expression, and of the press, a right that enjoys primacy in the realm of constitutional protection. For these rights constitute the very basis of a functional democratic polity, without which all the other rights would be meaningless and unprotected.[170]

In a SLAPP suit, the defendant-target is a party exercising a constitutionally-safeguarded right. In advocating for environmental protection and preservation, a defendant-target exercises its right to free speech and right to petition the government. However, in doing so, the defendant-target exposes himself or herself to the retaliation of adversely affected individuals and corporations.

To protect these defendant-targets from frivolous suits and to encourage their political participation, this Court adopted the defense of anti-SLAPP in our environmental procedure. This is the paradigm within which the anti-SLAPP rule was created.

The Writ of *Kalikasan*,[171] an environmental writ which may be issued under the rules, is an equally unique legal tool intended to ensure environmental law enforcement by making the powerful accountable. Similarly, the writ was created to "provide a stronger defense for

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[167] *Phil. Blooming Mills Employees Organization v. Phil. Blooming Mills Co., Inc.*, 151-A Phil. 656 (1973) [Per J. Makasiar, En Banc].

[168] *Primicias v. Fugoso*, 80 Phil. 71–127 (1948) [Per J. Feria, En Banc].

[169] 522 Phil. 201 (2006) [Per J. Azcuna, En Banc].

[170] Id. at 222.

[171] A.M. No. 09-6-8-SC, Rule 7, sec. 1 provides:

> Section 1. Nature of the writ. — The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

environmental rights through judicial efforts where institutional arrangements of enforcement, implementation, and legislation have fallen short... and to address the potentially exponential nature of large-scale ecological threats."[172] In fact, the rules were intentionally applied not only against the government but also against private entities because the Court recognized the "reality that private corporations threaten the exercise of environmental rights as much as government agencies that fail to fulfill their duties."[173]

Citizen activism through environmental advocacy is crucial to the protection, preservation, and conservation of our environment and natural resources. The promotion and survival of these political activities are the cornerstone of social justice in any democratic nation.

The creation of the procedural rules on environmental cases is, indeed, hinged on attaining social justice. SLAPP-back, as well as the issuance of the writ of *kalikasan*, aim to eliminate the power disparity between contending parties in environmental litigation. These legal devices reify the State's constitutional commitment to "protect and advance the right of the people to a balanced and healthful ecology."[174]

Hence, the remedy of anti-SLAPP cannot be haphazardly invoked by any defendant in an environmental case. SLAPP is a defense that may only be invoked by individuals who became target of litigation due to their environmental advocacy. It is not a remedy of powerful corporations to stifle the actions of ordinary citizens who seek to make them accountable. More so, it is not a tool given to large concessionaires who have their obligations and responsibilities under the law. On the other hand, citizens are favored under our Constitution to hold corporations accountable for the way that they discharge their responsibility as contractors and as agents of government in utilizing and developing natural resources that should benefit all.

In this case, petitioner cannot use this remedy. Within the context of SLAPP, petitioner is not exercising the right to free speech or the right to petition the government for redress of grievances. At the outset, petitioner is not advocating for the protection, preservation, and rehabilitation of the environment, but enforcement of its mining grant. The enforcement of a large mining concession is not an activity intended to be protected by the rules. This does not fall within the political activities protected by an anti-SLAPP law.

We agree with the observation of the appellate court insofar as the award of damages will go against the purpose of the anti-SLAPP rule. Allowing the petitioner's action will transform our anti-SLAPP provision into

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[172] A.M. No. 09-6-8-SC, *Rationale to the Rules of Procedure for Environmental Cases*, pp. 69–70.
[173] Id.
[174] CONST., art. II, sec. 16.

a blunt instrument which will create a chilling effect against future legitimate environmental cases.

Moreover, being sued by those within their contract area, or those affected by their contract area, is not actionable per se. Leeway should be given to those who may not have all the resources in order to pursue proof of their actions, such as the local community, indigenous peoples, farmers, and miners. They may lose in the end but just because they lose does not mean that their action is a SLAPP.

In this case, respondents' failure to sustain the litigation should not be recklessly construed against them. As this Court has explained, a citizen's right to petition the government must be favored and be given protection "regardless of whether the motivation for doing do is to advance their own interests."[175] Losing the case does not instantly transform the case into a SLAPP and entitle the petitioner to damages.

We cannot simply apply the anti-SLAPP provision in favor of petitioner, a large mining corporation granted with a mining concession. As a mining grantee, it is bound to comply with the provisions of the agreement and our laws. Citizens, whether or not they are directly affected by the mining concession, should be allowed to call out and make these corporations accountable. Our people must be given more liberty to express their concerns.

To reiterate, an anti-SLAPP motion is an extraordinary remedy deliberately crafted to address lawsuits tending to squelch an ordinary citizen's constitutional rights to free speech and petition to the government for redress of grievances. We cannot authorize the use of this remedy to a case for which it was never intended. To do otherwise would be a misuse of our environmental rules and a betrayal of social justice.

WHEREFORE, the Petition for Review is **DENIED**. The Resolutions of the Court of Appeals in CA G.R. SP No. 00018 are **AFFIRMED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

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[175] A.M. No. 09-6-8-SC, *Rationale to the Rules of Procedure for Environmental Cases*, p. 89.

WE CONCUR:

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice