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FILED
SUPERIOR COURT
OF GUAM

2022 JAN -4 PM 4:19

CLERK OF COURT,

BY: 

Of Counsel:

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Attorneys for Defendant:
SAMSUNG E & C AMERICA, INC.

IN THE SUPERIOR COURT OF GUAM

THE GOVERNMENT OF GUAM,

Plaintiff,

vs.

KEPCO MANGILAO SOLAR, LLC and
SAMSUNG E & C AMERICA, INC.,

Defendants.

) CIVIL CASE NO. CV0597-21
)
) DEFENDANT SAMSUNG E & C
) AMERICA, INC.'S ANSWER TO
) AMENDED COMPLAINT, FILED
) AUGUST 30, 2021; CERTIFICATE OF
) SERVICE
)
) No Schedule Order nor Trial Date
) Judge: Hon. Arthur R. Barcinas

**DEFENDANT SAMSUNG E & C AMERICA, INC.'S
ANSWER TO AMENDED COMPLAINT, FILED AUGUST 30, 2021**

Defendant Samsung E & C America, Inc. ("Samsung"), by and through its attorneys, Berman Law Firm and Bays Lung Rose & Voss, hereby answers Plaintiff The Government of Guam's ("Plaintiff") Amended Complaint, filed August 30, 2021 ("Complaint"), as follows:

FIRST DEFENSE

1. The Complaint fails to state a claim against Samsung upon which relief can be granted.

SECOND DEFENSE

2. With respect paragraphs 1 and 2 of the Complaint, Samsung states the allegations in said paragraphs contain legal conclusions that do not require a response, but to the extent said paragraphs contain factual allegations, Samsung denies the same.

3. Samsung is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 3, 5, 6, 7, 13, 14, 16, 17, 22 and 24 of the Complaint and on that basis denies the same.

4. Samsung admits the allegations contained in paragraphs 8 and 9 of the Complaint.

5. With respect to paragraph 4 of the Complaint, Samsung admits that its subcontractors have engaged in earth moving operations pursuant to permits that were duly approved. Samsung denies all additional allegations.

6. With respect to paragraph 10 of the Complaint, the Mangilao Solar Project E&SC Plan speaks for itself, and Samsung denies the allegations on that basis.

7. With respect to paragraph 11 of the Complaint, Samsung states the allegations in said paragraph contains legal conclusions that do not require a response, but to the extent said paragraph contains factual allegations, Samsung is without sufficient knowledge or information to form a belief as to the truth of said allegations and on that basis denies the same.

8. Samsung denies the allegations contained in paragraphs 12, 15, 19, 20, 21, 25 and 26 of the Complaint.

9. With respect to paragraphs 18 and 23 of the Complaint, Samsung incorporates and realleges each of its answers to the prior paragraphs as if fully set forth herein.

10. Samsung denies each and every allegation contained in the Complaint that is not expressly admitted herein.

THIRD DEFENSE

11. Plaintiff failed to exhaust its administrative remedies.

FOURTH DEFENSE

12. Plaintiff lacks standing to assert the claims set forth in the Complaint.

FIFTH DEFENSE

13. The Court lacks jurisdiction over the subject matter of Plaintiff's Complaint.

SIXTH DEFENSE

14. Plaintiff's Complaint fails to present a justiciable controversy between Plaintiff and Samsung.

SEVENTH DEFENSE

15. Plaintiff is barred from maintaining this action against Samsung because the questions presented by the action are either moot or not ripe for adjudication.

EIGHTH DEFENSE

16. Plaintiff is barred from maintaining this action against Samsung by reason of its own negligence or other wrongful conduct which caused the incident and damages alleged in the Complaint herein.

NINTH DEFENSE

17. Plaintiff is barred from maintaining this action against Samsung because Samsung's actions were taken with Plaintiff's knowledge, consent and/or acquiescence.

TENTH DEFENSE

18. Samsung had license to take the actions upon which Plaintiff's Complaint is based.

ELEVENTH DEFENSE

19. Samsung exercised reasonable care in developing and implementing the approved Mangilao Solar Project Erosion and Sediment Control Plan.

TWELFTH DEFENSE

20. Plaintiff's recovery in this action, if any, should be reduced in accordance with 18 Guam Code Annotated § 90108.

THIRTEENTH DEFENSE

21. Plaintiff's recovery in this action, if any, should be reduced in accordance with the doctrine of avoidable consequences.

FOURTEENTH DEFENSE

22. Plaintiff failed to take reasonable steps to reduce or minimize the damages experienced, if any.

FIFTEENTH DEFENSE

23. Plaintiff is barred from maintaining this action against Samsung based upon the doctrines of res judicata and collateral estoppel.

SIXTEENTH DEFENSE

24. Plaintiff is barred from maintaining this action against Samsung based upon the doctrines of laches, waiver, estoppel, and/or unclean hands.

SEVENTEENTH DEFENSE

25. Plaintiff is barred from maintaining this action based on the doctrine of equitable estoppel.

EIGHTEENTH DEFENSE

26. Plaintiff is barred from maintaining this action based on the failure to join indispensable parties.

NINETEENTH DEFENSE

27. Plaintiff is barred from maintaining this action based on the common enemy doctrine.

TWENTIETH DEFENSE

28. Plaintiff is barred from maintaining this action because Plaintiff is not the real party in interest.

TWENTY-FIRST DEFENSE

29. Samsung gives notice that it intends to rely upon any other matters constituting an avoidance or affirmative defense as set forth in Rule 8(c) of the Guam Rules of Civil Procedure, and that it intends to seek leave to amend its Answer to allege those defenses of which it may become aware during the course of discovery or trial of this action.

REQUEST FOR RELIEF

WHEREFORE, Samsung respectfully requests that:

- A. The Complaint filed herein be dismissed with prejudice;
- B. Samsung be awarded its reasonable attorneys' fees, costs and

expenses in defending against Plaintiff's Complaint; and

- C. The Court award Samsung such other and further equitable and legal relief as shall be reasonable and appropriate under the circumstances.

DATED: Hagatna, Guam, January 4, 2022.



DANIEL J. BERMAN
MICHAEL C. CARROLL
SHARON PARIS

Attorneys for Defendant
SAMSUNG E & C AMERICA, INC.

IN THE SUPERIOR COURT OF GUAM

THE GOVERNMENT OF GUAM,) CIVIL CASE NO. CV0597-21
)
Plaintiff,) CERTIFICATE OF SERVICE
)
vs.)
)
KOREA ELECTRIC POWER COMPANY)
and SAMSUNG E & C AMERICA, INC.,)
)
Defendants.)
)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was electronically served on the parties identified below via email on January 4, 2022:

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DATED: Hagatna, Guam, January 4, 2022.



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