

*BMC Corporation v. PPLA & PNCC*, 4 ROP Intrm. 172 (1994)  
**BMC CORPORATION, A PALAUAN CORPORATION,**  
**Appellant/Cross-Appellee,**

v.

**PALAU PUBLIC LAND AUTHORITY,**  
**AND PALAU NATIONAL COMMUNICATIONS CORPORATION,**  
**Appellees/Cross-Appellants.**

CIVIL APPEAL NO. 16-93  
Civil Action No. 445-93

Supreme Court, Appellate Division  
Republic of Palau

Opinion

Decided: March 23, 1994

Counsel for BMC: Martin Wolff

Counsel for PPLA: Kaipa Kincaid

Counsel for PNCC: Kevin Kirk

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice;  
PETER T. HOFFMAN, Associate Justice

PER CURIAM:

This action is part of a larger controversy surrounding ownership of the Palau International Airport grounds. BMC Corporation instituted this action seeking a declaratory judgment that an agreement between the Palau Public Lands Authority (“PPLA”) and the Palau National Communication Corporation (“PNCC”) leasing a portion of the airport grounds to PNCC was void because the PPLA had earlier deeded all of its interest in the property to the Airai Municipal Lands Authority (“AMLA”). PNCC answered and requested affirmative relief, asking the trial court to declare the PPLA deed to the AMLA void on the theory that the deed was executed without the PPLA Board’s permission or approval. BMC and PNCC filed cross-motions for summary judgment.

**¶173** Rather than rule on these motions, the trial court dismissed BMC’s complaint without prejudice, finding sua sponte and without notice or opportunity to be heard that BMC was not a real party in interest for reasons not important here. It is not clear whether the trial court was aware that PNCC had intended to seek affirmative relief, and it made no ruling whether BMC was a proper party in that regard.

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PNCC appeals. We vacate and remand.

#### DISCUSSION

We agree with PNCC that the trial court erred in dismissing the action without prior notice to the parties. While under appropriate circumstances the trial court has the power to dismiss a case sua sponte, due process requires that it provide the parties notice and opportunity to be heard before doing so. *Maidesil v. Besebes*, 2 ROP Intrm. 189, 193 (1991); cf. *Kumangai v. Isechal*, 1 ROP Intrm. 587, 589-90 (1989). This case is accordingly REMANDED to the trial court to afford the parties an opportunity to be heard on the question of whether the action should be dismissed for the reasons stated in the trial court's original dismissal order.<sup>1</sup>

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<sup>1</sup> We will not address the merits of PNCC's summary judgment motion because the threshold question of whether the action was properly dismissed must be resolved first.

We do not entertain BMC's oral motion to dismiss PNCC's appeal because it was not made in accordance with the applicable rule of appellate procedure. See ROP R. App. Pro. Rule 27.