

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

DIONISIO TRIGO GONZALEZ, CARMEN REGINA SUAREZ SEIN, and their Conjugal Property Partnership; BENIGNO TRIGO GONZALEZ, TERESA ZAPATA BIRD, and their Conjugal Property Partnership; TRIGO CORP.; GUILLERMO L. MARTINEZ, BERTITA MARTINEZ MARTINEZ, and their Conjugal Property Partnership; GUSTAVO HERMIDA CELA, GLORIA COLON SUAREZ, and their Conjugal Property Partnership; RAMON GONZALEZ CORDERO, KETTY SIMOUNET DE GONZALEZ, and their Conjugal Property Partnership; DR. JORGE HESS, REGINA TRIGO DE HESS, and their Conjugal Property Partnership; TRIMAR INVESTMENTS CORP.; SAN RAFAEL HOLDINGS, LLC; CECI MONTILLA ROJO; 322 DE DIEGO HOLDINGS, LLC; JOSE A. VALDES MUZAURIETA, ADRIENNE MUENTES ORTIZ, and their Conjugal Property Partnership; VALMU TRUST; 2015, LLC; EDUARDO ARTAU GOMEZ, CARMEN FELICIANO VARGAS, and their Conjugal Property Partnership; FIRST MEDICAL HEALTH PLAN, INC.; ADRIEL LONGO RAVELO; ERNESTO A. SMITH a/k/a ERNESTO ANTONIO SMITH BRINGAS, SARESS E. SMITH a/k/a SARESS ELLERBE SMITH a/k/a SARESS ELLERBE MCDANIEL, and their Conjugal Property Partnership; FEDERICO M. STUBBE ARZUAGA; FEDERICO STUBBE GONZALEZ; STUGO, LLC; FSA INVESTMENTS, LLC; NORTHSHORE MANAGEMENT, CORP.; HEIRS OF THE ESTATE OF ROSARIO FERRE RAMIREZ DE ARELLANO composed by Benigno Trigo Ferré, Rosario Lorenza Trigo Ferré, and Luis Alfredo Trigo Ferré; 419 PONCE DE LEON, INC.

Plaintiffs,

vs.

ALEJANDRO GARCIA PADILLA, in his official capacity as Governor of Puerto Rico; JUAN C. ZARAGOZA GOMEZ, in his official capacity as Secretary of the Department of the Treasury of Puerto Rico; THE GOVERNMENT DEVELOPMENT BANK OF PUERTO RICO; PUERTO RICO PUBLIC FINANCE CORPORATION; MELBA ACOSTA FEBO, in her official capacity as President of The Government Development Bank of Puerto Rico and of the Puerto Rico Public Finance Corporation; PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY; VICTOR SUAREZ MELENDEZ, in his official capacity as Executive Director of the Puerto Rico Fiscal Agency and Financial Advisory Authority

Defendants.

CIVIL NO. 16-02257

**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' GARCÍA-PADILLA AND ZARAGOZA-GOMEZ "NOTICE OF AUTOMATIC STAY"**

**TO THE HONORABLE COURT:**

**NOW COME** Plaintiffs DIONISIO TRIGO GONZALEZ, CARMEN REGINA SUAREZ SEIN, and their Conjugal Property Partnership; BENIGNO TRIGO GONZALEZ, TERESA ZAPATA BIRD, and their Conjugal Property Partnership; TRIGO CORP.; GUILLERMO L. MARTINEZ, BERTITA MARTINEZ MARTINEZ, and their Conjugal Property Partnership; GUSTAVO HERMIDA CELA, GLORIA COLON SUAREZ, and their Conjugal Property Partnership; RAMON GONZALEZ CORDERO, KETTY SIMOUNET DE GONZALEZ, and their Conjugal Property Partnership; DR. JORGE HESS, REGINA TRIGO DE HESS, and their Conjugal Property Partnership; TRIMAR INVESTMENTS CORP.; SAN RAFAEL HOLDINGS, LLC; CECI MONTILLAROJO; 322 DE DIEGO HOLDINGS, LLC; JOSE A. VALDES MUZAURIETA, ADRIENNE MIENTES ORTIZ, and their Conjugal Property Partnership; VALMU TRUST; 2015, LLC; ADRIEL LONGO RAVELO; ERNESTO A. SMITH a/k/a ERNESTO ANTONIO SMITH BRINGAS, SARESS E. SMITH a/k/a SARESS ELLERBE SMITH a/k/a SARESS ELLERBE MCDANIEL, and their Conjugal Property Partnership; FEDERICO M. STUBBE ARZUAGA; FEDERICO STUBBE GONZALEZ; STUGO, LLC; FSA INVESTMENTS, LLC; NORTSHORE MANAGEMENT, CORP.; HEIRS OF THE ESTATE OF ROSARIO FERRE RAMIREZ DE ARELLANO composed by Benigno Trigo Ferré, Rosario Lorenza Trigo Ferré, and Luis Alfredo Trigo Ferré; 419 PONCE DE LEON, INC. (hereinafter the "Plaintiffs"), represented by their undersigned attorneys, and respectfully state, allege and pray:

1. Codefendants Hon. Alejandro García-Padilla and Hon. Juan C. Zaragoza-Gómez, filed a NOTICE OF AUTOMATIC STAY IN THIS ACTION, on July 7, 2016 (Dkt. No. 5), (hereinafter the "Notice").
2. On July 8, 2016 the Court entered an Order directing Plaintiffs to respond to said Notice of Automatic Stay by no later than July 18, 2016 (Dkt. No. 6).
3. Though Codefendants García-Padilla and Zaragoza-Gómez requested the Court

to “acknowledge that this litigation has been temporarily stayed by the Puerto Rico Oversight, Management and Economic Stability Act (“PROMESA”), Pub. L. No. 114-187, the Court, in its Order at Dkt. 6, stated expressly, *inter alia*, that

At this time, without the benefit of full briefing by the parties, the Court will not "acknowledge that this litigation has been temporarily stayed by the [PROMESA] Act."

4. Under the **JURISDICTION AND VENUE** statements in the Complaint, Plaintiffs averred

11. This Court is not impeded from entertaining the present action by Section 405(b) of the Puerto Rico Oversight, Management and Economic Stability Act (PROMESA), which once signed by the President will be applied retroactively to claims filed after December 18, 2015, as: (i) the remedies requested herein do not seek to obtain a monetary award or payment, nor to obtain an equitable remedy for breach of performance, and (ii) the complaint is filed to assert and protect Plaintiff's rights under the Constitution of the United States.

The Complaint neither asserts nor alleges that this is an action or proceeding to enforce or collect claims. At footnote 3 of the Notice, the posturing Codefendants submit that PROMESA “. . . mandates a stay in two different situations: (1) the commencement or continuation of a proceeding with respect to a “Liability” and (2) an action to recover a “Liability Claim” (as defined in Section 405(a)(2) of the Act) arising before the enactment of the Act.” They further advance the contention that, in accordance with a Report from the Committee of Natural Resources of the House of Representatives, Section 405(b)(1) of PROMESA establishes an automatic stay on all litigation against Puerto Rico and its instrumentalities, as well as any other judicial, administrative or other action or proceedings to enforce or collect claims. See footnote 3 at page 2 of the Notice.

5. In the body of their Notice, Codefendants García-Padilla and Zaragoza-Gómez neither state nor allege that the Complaint is a proceeding with respect to a “Liability” nor that it is an action to recover a “Liability Claim”. They merely cite Plaintiffs’ allegations at ¶¶ 15 and 16 of the Complaint, that defaults have occurred with respect to scheduled payments for bonds issued by the Government Development Bank (“GDB”) and owned by Plaintiffs, beginning on May 1, 2016, and that defaults have occurred with respect to bonds issued by the Puerto Rico Public Finance Corporation (“PRPFC”) beginning on August 1, 2015. Those two simple statements in the pleadings, serve to establish the standing of Plaintiffs to bring this action which does not seek a single remedy to enforce or collect claims. Rather, the Complaint is exclusively directed and limited to seeking declaratory judgment as to unconstitutionality of certain sections of the Moratorium Act, and injunctive relief with respect to any actions predicated upon the challenged sections of the Moratorium Act.
6. Section 405(c) of PROMESA provides for the lifting of any stay under that Act, for cause shown after notice and hearing, except when the effects of that stay can produce “irreparable damage” (see Section 405 (g)). Though Plaintiffs are not seeking damages nor collection of any monies, nor enforcement of any liability, the short, intermediate and long-term effect of the Moratorium Act, can facilitate the ransacking of GDB and/or PRPFC, depleting their assets and reducing them to “shell” status, rendering useless any future effort by Plaintiffs to protect their rights and investments. Please see Complaint ¶ 52, wherein Plaintiffs allege that damages to which they are exposed “are both imminent and irreparable.” Notwithstanding the foregoing, as succinctly stated at ¶ 11 of the Complaint, the same is filed “to assert and protect Plaintiffs’ rights under the Constitution.” In the event that the Court finds that PROMESA’s stay provisions apply to this action, Plaintiffs respectfully submit that their exposure to being deprived of their

substantive rights (for example, through a series of “emergency” Executive Orders without precedent, of which the Court may take judicial notice) is sufficient cause to grant relief from the stay.

7. PROMESA contains no provision directed towards curtailing, prohibiting or precluding the filing of any action solely directed at challenging the constitutionality of any statutory provision. There does not appear to be in Section 405 of PROMESA, any intention on the part of Congress to block or stay constitutional claims. Moreover, in Johnson v. Robinson, 415 U.S. 361, 373-74 (1974), the Supreme Court required a showing of “clear and convincing evidence” of congressional intent to bar lawsuits which present constitutional claims. There is absolutely no language in PROMESA that can overcome this test and serve to bar courts from entertaining constitutional claims. The gravity of not addressing such claims can lead to the serious and major question related to the constitutionality of PROMESA’s barring of the judicial review and evaluation of constitutional claims.

WHEREFORE, Plaintiffs respectfully pray that the Court enter an order finding that PROMESA stay provisions do not apply to the instant action, and directing the continuation of proceedings.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 18<sup>th</sup> day of July, 2016.

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