

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

U.S. BANK TRUST NATIONAL
ASSOCIATION

Plaintiff

v.

THE COMMONWEALTH OF PUERTO
RICO,

ALEJANDRO GARCÍA PADILLA, in his
official capacity as Governor of the
Commonwealth of Puerto Rico,

UNIVERSITY OF PUERTO RICO,

and

DR. CELESTE FREYTES GONZÁLEZ, in
her official capacity as President of the
University of Puerto Rico

Defendants

CIVIL NO. 16-2510

UPR DEFENDANTS' POST HEARING BRIEF IN SUPPORT OF STAY

TO THE HONORABLE COURT:

COME NOW codefendants, University of Puerto Rico¹ and Dr. Celeste E. Freytes González, in her official capacity as Acting President of the University of Puerto Rico (collectively the “UPR defendants”), specially appearing and without submitting to the jurisdiction or venue of this Honorable Court, and in compliance with this Honorable Court’s

¹ The University of Puerto Rico (“UPR”) is a government instrumentality and, as an arm of the state, it is entitled to Eleventh Amendment immunity from suit, and for that additional reason, the complaint must be dismissed as against the UPR. Irizarry-Mora v. Univ. of Puerto Rico, 647 F.3d 9, 11–17 (1st Cir.2011); Marrero-Ramos v. Univ. of Puerto Rico, 46 F. Supp. 3d 127, 131 (D.P.R. 2014).

orders, for their post hearing brief, respectfully state and pray as follows:

1. In their September 12, 2016 Opposition to Motion and Memorandum of Law Requesting Relief From the PROMESA Stay (Docket 33) (the “Opposition”), codefendants the Commonwealth of Puerto Rico and the Hon. Alejandro García Padilla, explained the reasons why under the applicable legal standard, this Honorable Court should deny plaintiff U.S. Bank Trust National Association’s (“Plaintiff”) request to lift the stay provided by § 405 of the Puerto Rico Oversight, Management, and Economic Stability Act, Pub. L. No. 114-187 (2016) (“PROMESA”). The UPR defendants joined codefendants’ Opposition. *See* Docket 34.

2. As noted in the Opposition, Plaintiff has not shown “cause”, as required under the applicable legal standard, to lift the automatic stay because: (1) Plaintiff will not suffer any harm during the duration of the stay; (2) the insolvency or potential insolvency of the Commonwealth or its instrumentalities is not “cause” for lifting the PROMESA stay and does not constitute irreparable harm; (3) an alleged lack of adequate protection is not “cause” to lift the PROMESA stay; (4) even if lack of adequate protection could be considered “cause”, Plaintiff would not be able to satisfy that standard as its interests are adequately protected; and (5) the harm to the Commonwealth of Puerto Rico, the University of Puerto Rico and the public interest manifestly outweighs any harm allegedly suffered by the Plaintiff as a result of the automatic stay.

3. As relevant to this case, the evidence submitted during the §405 hearing held before this Honorable Court on September 22 and 23, 2016 – and more specifically the testimony of Plaintiff’s own employee and witness Laura L. Moran – underscored and corroborated the factual underpinnings of the defendants’ arguments in support of continuing the PROMESA stay.

Applicable legal standard.

4. Section §405(e)(2) of PROMESA authorizes this Honorable Court to grant relief from PROMESA's stay "*for cause shown*". In this regard, a court may grant relief from the stay "as is necessary to prevent irreparable damage to the interest of an entity in property..." *See* Section §405(g) of PROMESA. Plaintiff bears the burden of establishing cause to lift the stay. In re Bogdanovich, 292 F.3d 104, 110 (2d Cir. 2002). No such showing was made by Plaintiff on the facts of this case.

Plaintiff will not suffer irreparable harm during the stay.

5. Plaintiff alleges that, pursuant to the relevant Trust Agreement, the UPR has pledged certain revenues - tuition and student fees collected yearly from students of the UPR (the "Pledged Revenues") - as collateral for the payment of certain UPR bonds. It further alleges that since June 2016, the UPR has not transferred any Pledged Revenues to the Trustee. Plaintiff's request for relief is thus premised on the notion that unless the PROMESA stay is lifted, it will suffer irreparable harm because it will be permanently deprived of its promised collateral. *See* Docket 38 at 2-3.

6. But Plaintiff's claim of irreparable harm requires that this Court overlook the nature of the Pledged Revenues and the admitted fact that even if the UPR did not deposit any Pledged Revenues with the Trustee for the entire duration of the PROMESA stay, there still exist today on deposit with the Trustee enough monies to cover every principal and interest payment due on the UPR bonds through December 2017, a date several months past the stay's expiration date.

7. As testified by Plaintiff's employee Ms. Moran, the next payments due on the UPR bonds are as follows: (1) approximately \$10 million in interest due December 1, 2016; (2) approximately \$10 million in interest due June 1, 2017; (3) a payment of principal in the amount of approximately \$20 million also on June 1, 2017; and (4) an interest payment in December 2017 in an unspecified amount less than \$12 million. *See* Transcript of Testimony of Ms. Moran on September 22, 2016 at P. 146, L. 4 to P. 147, L. 4; P. 148, L. 21 to P. 149, L. 21. As admitted by Ms. Moran, even if the stay remains in place through its expiration date in February 2017, the existing collateral includes enough cash in the Trustee's reserve account to make *all* of these payments. *Id.*

8. Moreover, Plaintiff's argument claiming a permanent deprivation of its collateral – the underlying premise of the case law it cites - gives no weight to the admitted fact that the tuition and fees that conform the Pledged Revenues here, constitute a recurring yearly revenue stream which more than doubles the entire annual debt service on the UPR bonds. *See* Docket 3 at 2. Put another way, contrary to other situations reflected in the case law cited by Plaintiff where collateral is consumed and irreplaceable, or otherwise has a certain end date, here the Pledged Revenues are constantly replenished by a yearly stream of tuition and fee payments received from students every year.

9. As shown above, not only is there no demonstrable *irreparable* harm to UPR bondholders if the stay is allowed to continue until expiration four months from now, there is no identifiable harm *at all*, since the collateral on deposit with the Trustee is enough to cover all payments due even in the months *after* the stay expires. And, PROMESA itself provides that its interim stay “does not discharge an obligation of the Government of Puerto Rico or release,

invalidate, or impair any security interest or lien securing such obligation.” *See* PROMESA Section §405(k). The uncontested facts of this case weigh against lifting the stay imposed by PROMESA.

Conclusion.

10. As emphasized in the briefs filed by the other Commonwealth defendants, PROMESA was intended to provide a statutory vehicle for a comprehensive negotiation and ultimate restructuring of the debt of the Commonwealth and its instrumentalities. The PROMESA stay is an integral part of that statutory scheme, precisely designed to allow all stakeholders – not just the privileged few – to have their voices heard and their rights respected. It also allows a minimal period for the Oversight Board to learn the facts, and with the benefit of input from all stakeholders, to promote and advance a meaningful and considered restructuring process. It should be given appropriate space to perform its important work without the added distractions that multiple lawsuits create.

WHEREFORE, codefendants the University of Puerto Rico and its Acting President, Dr. Celeste E. Freytes González, respectfully ask this Honorable Court to deny the Plaintiff’s motions to lift the stay and for preliminary injunctive relief.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 7th day of October, 2016.

I HEREBY CERTIFY that on this same date I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Luis A. Oliver

Luis A Oliver (209204)

loliver@fgrlaw.com

s/Ricardo L. Ortiz-Colón

Ricardo L. Ortiz-Colón (205510)

rortiz@fgrlaw.com

s/Edgardo Barreto-Pagán

Edgardo Barreto Pagán (224612)

ebarreto@fgrlaw.com

**Counsel for Defendants University of Puerto
Rico and its Acting President Dr. Celeste Freytes
González**

Fiddler González & Rodríguez, PSC

PO Box 363507

San Juan, PR 00936-3507

Tel. 787-759-3258

Fax. 787-250-7565