

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

MUNICIPIO AUTÓNOMO DE PONCE
Villa St. & Las Delicias Public Square
P.O. Box 331709
Ponce, P.R. 00733-1709

Plaintiff

v.

Alejandro J. García Padilla (in his official capacity as Governor of Puerto Rico); **Juan C. Zaragoza Gómez** (in his official capacity as Secretary of the Puerto Rico Department of the Treasury); **Government Development Bank**; and **Melba Acosta Febo** (in her official capacity as President of the Commonwealth of Puerto Rico Government Development Bank and Chairwoman of GDB's Board of Directors),

Defendants

CASE NO.: 16-cv-10610(FAB)

REPLY TO RESPONSE IN OPPOSITION TO
MOTION FOR LEAVE OF COURT TO FILE INTERVENING VERIFIED COMPLAINT

COME NOW, Plaintiffs, Municipio Autónomo de Ponce (represented herein by its Major, Hon. María E. Meléndez Altieri (henceforth the "Municipality"), through the undersigned attorneys, and very respectfully state and pray as follows:

1. On April 4, 2016 Plaintiffs filed a Complaint [dkt. no. 1] against the GDB, seeking injunctive relief to enjoin the GDB from the following:
 - a. enjoining, until further order of the Court, GDB from making payments to creditors, except to the extent the funds must be immediately used to maintain services essential to the public safety of citizens of Puerto Rico, or to pay the ordinary course operating expenses of GDB such as utilities, rent, and employee wages;

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- b. Enjoining, until further order of the Court, GDB from forgiving or compromising debts owed to GDB; and
 - c. Declaring transfers by GDB in violation of said injunction null and ineffective.
2. Subsequently, on May 20, 2016, Plaintiffs filed an Amended Complaint [dkt. no. 52]. This time, Plaintiffs allege that several provisions of the Moratorium Act, as amended, are unconstitutional, among others reasons, because said provisions substantially impairs the obligation of contracts in a manner that is not a reasonable, necessary, or narrowly tailored means of promoting a legitimate, important, or compelling government interest; allow for the taking private property for public use without just compensation; the United States Constitution additionally reserves to the United States Congress the power to enact bankruptcy laws and preempts laws that conflict with the federal Bankruptcy Code; and deny Plaintiffs open access to the federal courts.
 3. The Municipality concurs with Plaintiffs and accordingly, on July 18, 2016, the Municipality requested leave of Court to file an intervening verified complaint [dkt. no. 88].
 4. On August 1, 2016, defendants Alejandro García Padilla and Juan Zaragoza Gómez responded in opposition to the Municipality's request for leave to file an intervening verified complaint [dkt no. 88]. Interestingly, defendants Alejandro García Padilla and Juan Zaragoza Gómez have not opposed to the *MOTION TO INTERVENE OF THE MUNICIPALITIES SAN JUAN AND CAROLINA*, entered at dkt. no. 46. In summary, defendants Alejandro García Padilla and Juan Zaragoza Gómez aver that the Municipality's request for leave to intervene in this action must be denied as its prayer for relief constitutes a "Liability" under Section 205(b)(1) of PROMESA.
 5. The Municipality respectfully disagrees with the proposition by defendants Alejandro García Padilla and Juan Zaragoza Gómez; defendants misconstrue the term "Liability".

6. Pursuant to Section 405(a)(1) of PROMESA a “liability” is defined as:

(a) DEFINITIONS.—In this section:

(1) LIABILITY.—The term “Liability” means a bond, loan, letter of credit, other borrowing title, obligation of insurance, or other financial indebtedness for borrowed money, including rights, entitlements, or obligations whether such rights, entitlements, or obligations arise from contract, statute, or any other source of law related to such a bond, loan, letter of credit, other borrowing title, obligation of insurance, or other financial indebtedness in physical or dematerialized form, of which—

(A) the issuer, obligor, or guarantor is the Government of Puerto Rico; and

(B) (B) the date of issuance or incurrence precedes the date of enactment of this Act.

7. In the instance action, the Municipality maintains, just as plaintiffs do, that Sections 105, 201(b), 201(c), 203(b)(i), and 203(f) of the Moratorium Act (as amended), and any action to enforce these provisions, are null and void, as such provisions are unconstitutional on its face, and as applied, under the Constitution of the United States and the Constitution of the Commonwealth of Puerto Rico.

8. The Municipality also challenges Executive Orders numbers 2016-010, 2016-014, and 2016-014 promulgated by the Alejandro García Padilla, Governor of the Commonwealth of Puerto Rico on April 8, 2016, April 30, 2016, and June 30, 2016, respectively (hereinafter the “Executive Orders”), pursuant to the Moratorium Act, as such Executive Orders are unconstitutional on its face, and as applied, under the Constitution of the United States and the Constitution of the Commonwealth of Puerto Rico.

9. Specifically, the Municipality’s prayer for relief calls for a declaratory relief in the following terms, to wit:

- a. Declare, on Count I, that Sections 105, 201(b), 201(c), 203(b)(i), and 203(f) of the Moratorium Act (as amended), and any action to enforce these provisions, are null and void because they violate the Contract Clauses of the United States and Puerto Rico Constitutions, severing these provisions from the Moratorium Act, and enjoining Defendants from taking any action to enforce these provisions;

- b. Declare, on Count II, that Sections 105, 201(b), 201(c), 203(b)(i), and 203(f) of the Moratorium Act (as amended), and any action to enforce these provisions, are null and void because they violate the Taking Clauses of the United States and Puerto Rico Constitutions, severing these provisions from the Moratorium Act, and enjoining Defendants from taking any action to enforce these provisions;
- c. Declare, on Count III, that Sections 105, 201(b), 201(c), 203(b)(i), and 203(f) of the Moratorium Act (as amended), and any action to enforce these provisions, are null and void because they are preempted by Section 903(1) of the Bankruptcy Code and violate Article I, Section 8 of the United States Constitution; and
- d. Declare, on Count IV, that Sections 105, 201(b), 201(c), 203(b)(i), and 203(f) of the Moratorium Act (as amended), and any action to enforce these provisions, are null and void because they are preempted by Section 903(1) of the Bankruptcy Code and violate Article I, Section 8 of the United States Constitution.

10. The aforesaid challenged provisions of the Moratorium Act have harmed the Municipality and, if allowed to stand, will further harm the Municipality. Accordingly, the Municipality seeks a declaration that Sections 105, 201(b), 201(c), 203(b)(i), and 203(f) of the Moratorium Act are null and void because they violate the United States Constitution, the Bankruptcy Code, and the Puerto Rico Constitution, and an injunction prohibiting Defendants from enforcing the challenged provisions of the Moratorium Act and the Executive Orders.

11. Resultantly, the Municipality's action or claims in the instance action in no way or manner constitute a "Liability" under Section 405(b)(1) of PROMESA, as defendants Alejandro García Padilla and Juan Zaragoza Gómez unduly purport.

12. Finally, and contrary to defendant's proposition, municipalities can suffer injury, and therefore have standing, when the state violates the constitutional rights of their residents. See, *Romer v. Evans*, 517

U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996), and *Washington v. Seattle School District No.1*, 458 U.S. 457, 73 L. Ed. 2d 896, 102 S. Ct. 3187 (1982).

13. Moreover, “a state legislature may not be omnipotent even as to the disposition of some types of property owned by municipal corporations. Further, other cases in this Court have refused to allow a State to abolish a municipality, or alter its boundaries, or merge it with another city, without preserving to the creditors of the old city some effective recourse for the collection of debts owed them. ...Where the resource for the payment of the bonds of a municipal corporation is the power of taxation existing when the bonds were issued, any law which withdraws or limits the taxing power and leaves no adequate means for the payment of the bonds is forbidden by the Constitution of the United States, and is null and void.” *Mobile v. Watson*, supra, 116 U.S., at 305. ... This line of authority conclusively shows that the Court has never acknowledged that the States have power to do as they will with municipal corporations regardless of consequences. Legislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution. *Gomillion v. Lightfoot*, 364 U.S. 339, 344-345, 81 S. Ct. 125, 5 L. Ed. 2d 110 (1960).

14. Finally, if federal law grants powers or funds to cities, state law cannot countermand that grant of power or funds. In other words, the Supremacy Clause empowers Congress to grant municipalities rights and powers against the states that created those municipalities. See *City of Tacoma v. Taxpayers of Tacoma*, 357 U.S. 320 (1958); and *Lawrence Cnty. v. Lead-Deadwood Sch. Dist. No. 40-1*, 469 U.S. 256 (1985).

WHEREFORE, the Municipality respectfully requests from this Honorable Court to take notice of the above for all pertinent purposes and, accordingly, that leave is granted to file an Intervening Complaint pursuant to Fed. Rule 24 (a) (2) and (b) (1) (B), as requested at docket entry no. 80, and any other relief under the Law or Equity.

RESPECTFULLY SUBMITTED.

IT IS CERTIFIED, that on this date I electronically filed the foregoing motion with the Clerk of Court using the CM/ECF system, which will send notification of said filing to the counsels of record.

At San Juan, Puerto Rico, on this 17th day of September of the year 2016.

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