

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

LEX CLAIMS, LLC et al.,

Plaintiffs,

v.

ALEJANDRO GARCÍA PADILLA et al.,

Defendants.

CIVIL NO. 16-2374 (FAB)

**MOTION REGARDING NOTICE OF AUTOMATIC STAY AND FOR EXTENSION OF  
TIME TO ANSWER THE SECOND AMENDED COMPLAINT  
OR OTHERWISE PLEAD**

**TO THE HONORABLE COURT:**

COME NOW, co-defendants Hon. Alejandro García Padilla, Hon. Juan C. Zaragoza Gómez and Hon. Luis Cruz Batista, in their respective official capacities (collectively “defendants”), specially appearing and without submitting to the jurisdiction or venue of this Court, and hereby state and pray as follows:

1. Plaintiffs filed their original complaint on July 20, 2016. Dkt. No. 1.
2. On August 15, 2016, plaintiffs filed a first amended complaint. Dkt. No. 25.
3. On October 7, 2016, plaintiffs sought leave to file a second amended complaint. Dkt. No. 39. This proposed second amended complaint purported to add eleven new causes of action and several new co-defendants, including the Commonwealth of Puerto Rico (the “Commonwealth”), the Puerto Rico Sales Tax Financing Corporation (a/k/a “COFINA,” for its acronym in Spanish), Mr. Juan Vaquer, in his capacity as Executive Director of COFINA (“Vaquer”), and the Bank of New York Mellon Corp. (“BoNY”), as trustee for certain COFINA bonds. Docket No. 39-1.

4. In their motion for leave to amend the complaint a second time, plaintiffs openly recognized that most of their thirteen causes of action are temporarily stayed by the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”), 48 U.S.C. § 2101 et seq., which was enacted into law on June 30, 2016. Dkt. No. 39. Nevertheless, plaintiffs argued that Counts 1-3 and Count 12 of their proposed second amended complaint are not stayed by PROMESA.

5. On November 4, 2016, this Court entered an Order granting plaintiffs’ request for leave to file a second amended complaint. Dkt. No. 76. However, this Order was granted “to the extent of allowing the second amended complaint to be filed.” The Court specifically held that “[w]hether the First, Second, Third and Twelfth causes of action may be prosecuted will be decided in due course.” Id.

6. On November 4, 2016 plaintiffs filed their second amended complaint. Dkt. No. 78.

7. An amended complaint, once filed, normally supersedes the antecedent complaint. Thereafter, the earlier complaint is a dead letter and ‘no longer performs any function in the case.’” Connectu LLC v. Zuckerberg, 522 F.3d 82, 91 (1st Cir. 2008) (citations omitted). At present, the parties differ as to whether Counts 1-3 and 12 of the second amended complaint, the only operative pleading before the Court, are stayed by PROMESA, and the matter is *sub judice*. Dkt. No. 76.

8. On November 7, 2016 the appearing defendants filed a Notice of Automatic Stay pursuant to PROMESA. Dkt. No. 84 (“Notice”). In said Notice, incorporated herein by reference, defendants argued that this case is stayed **in its entirety** pursuant to sections 405(b)(1) and 405(b)(3-6) of PROMESA. In the alternative, defendants requested that the Court stay the

piecemeal litigation and disposition of Counts 1-3 and 12 of the second amended complaint in the exercise of its discretion and its inherent power to manage its docket. Id.

9. On November 16, 2016 the Court entered an Order stating that it will consider the filing of the Notice as a motion requesting the Court to stay this action, not as a notice that it is stayed. Dkt. 103.<sup>1</sup>

10. Pursuant to Fed.R.Civ.P. 15(a)(3), were this case not stayed, the time for the appearing defendants to answer the second amended complaint would expire on November 21, 2016.<sup>2</sup>

11. Yesterday, November 15, 2016, this Court issued an Opinion and Order denying plaintiffs' request to lift the PROMESA stay in several cases consolidated with the case of Brigade Leveraged Capital Structures Fund Ltd. v. The Government Development Bank for Puerto Rico, Civ. No. 16-1610. Dkt. No. 140. In so ruling, this Court held that vacating the stay would undermine "the comprehensive, consolidated approach that [PROMESA] was ultimately designed to facilitate." Id. at 42. The Court also concluded that "[a]llowing the creditors in these actions to litigate their individual solutions in court, however, would interfere with the orchestration of this

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<sup>1</sup> The appearing defendants respectfully submit, as they have done in this and other related cases filed post-PROMESA, that the PROMESA stay is self-executing and that it is plaintiffs' burden to establish its inapplicability or seek relief from it pursuant to § 405(e) of PROMESA. The stay provisions contained in § 405(b) of PROMESA were modelled after the stay provisions in § 362 of the Bankruptcy Code, 11 U.S.C. § 362. In the bankruptcy context, "[t]he debtor has the burden of providing the creditor with actual notice. Once the creditor receives actual notice, the burden shifts to the creditor to prevent violations of the automatic stay." In re Whitman-Nieves, 519 B.R. 1, 8 (Bankr. D.P.R. 2014) (quoting Fleet Mtg. Grp. v. Kaneb, 196 F.3d 265, 269 (1st Cir. 1999)); see also In re Bogdanovich, 292 F.3d 104, 110 (2d Cir. 2002) ("The burden is on the moving party ... to make an initial showing of cause" to lift the stay.).

Plaintiffs have not met this burden and have not affirmatively moved the Court for an order lifting the stay. Therefore, it is defendants' contention that at present the case should be stayed--either pursuant to PROMESA or this Court's inherent power to manage its docket--pending further determination of the Court and that the deadline to answer the second amended complaint should not begin to run until such a determination is made.

<sup>2</sup> This period takes into account fourteen days plus the additional three-day period provided for in FRCP 6(d) and Local Rule 5(e).

approach” and would “in essence, permit them to ‘jump to the front of the line’ to protect their own interests before other creditors have had the opportunity to defend theirs.” Id. at 42-43. Allowing the piecemeal litigation of claims advocated by the plaintiffs in this case—which is premised on technical distinctions regarding the statutory predicates for their different causes of action but ignores the scope of the relief requested—would lead to precisely such a result, which PROMESA sought to avoid. Defendants respectfully submit that this Court’s decision in Brigade militates in favor of a complete stay of plaintiffs’ claims in this case.

12. In the alternative, and in the interest of judicial economy, defendants respectfully request an extension of time until December 5, 2016 to answer the second amended complaint or otherwise plead. The extension sought is justified for the following reasons.

13. First, co-defendants COFINA and Vaquer, who have never appeared in this action, were served with summons only two days ago, and their deadline to answer the complaint or otherwise plead expires on December 5, 2016. See Dkt. 88, 89. Hence, granting the extension sought herein would not delay the proceedings in any way and would set a single deadline for all served defendants to answer the second amended complaint or otherwise plead, should such a pleading be required.

14. Second, the docket in this case reflects that summons has been issued as to BoNY, but it has not been returned executed as to this co-defendant. In addition, it appears that summons has not been issued or served as to the Commonwealth, who was added as a separate defendant in the second amended complaint. Therefore, by the time the extended deadline expires, all defendants will not have yet appeared before this Court.

15. Third, in the interest of judicial economy and in keeping with the purpose behind PROMESA, granting the alternative extension sought herein might allow the Court to make a final

determination regarding the applicability of the stay mandated by PROMESA to Counts 1-3 and 12 of the second amended complaint before any responsive pleadings are due. Such a determination might make unnecessary the filing of premature responsive pleadings and might provide some clarity as to how to address plaintiffs' contention (with which defendants clearly disagree) that 4 out of 13 causes of action should be individually and separately litigated at this time, pending the expiration of the PROMESA stay only a few months from now.

**WHEREFORE**, for the foregoing reasons and those stated in the Notice filed at Dkt. No. 84 (incorporated herein by reference), this action should be stayed as a matter of law by section 405 of PROMESA. In the alternative, defendants' respectfully request that the Court stay the piecemeal litigation and disposition of Counts 1-3 and 12 of the second amended complaint in the exercise of its discretion and its inherent power to manage its docket, or grant defendants until December 5, 2016 to answer the second amended complaint or otherwise plead.

**RESPECTFULLY SUBMITTED.**

**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.

In San Juan, Puerto Rico, this 16<sup>th</sup> day of November, 2016.

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