

**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.

Case No. 3:16-cv-02374 (FAB)

**RESPONSE TO THE BANK OF NEW YORK MELLON’S MOTION FOR JOINDER**

TO THE HONORABLE COURT:

Plaintiffs hereby submit this response to the “Joinder of The Bank of New York Mellon, as Trustee, to Notice of Automatic Stay” (Dkt. 134), filed on November 30, 2016, by defendant The Bank of New York Mellon (“BNY”). On December 2, 2016, this Court ordered that BNY’s filing will be considered as a motion to stay. See Dkt. 135. The Court also directed plaintiffs to respond to the motion by December 16, 2016. See *ibid*.

In its motion, BNY seeks to join in the motion to stay (Dkt. 84) filed by defendants Alejandro García Padilla, Juan C. Zaragoza Gómez, and Luis Cruz Batista (collectively, the “Commonwealth Officer Defendants”), and incorporates by reference the factual and legal arguments contained therein. In particular, BNY requests that the Court enter an order finding that the Second, Third, and Twelfth Counts of plaintiffs’ Second Amended Complaint (but not the First Count) are stayed by Sections 405(b)(1) and (b)(3)-(6) of the Puerto Rico Oversight, Man-

agement, and Economic Stability Act (“PROMESA”). In the alternative, BNY requests that the Court enter an order staying the First, Second, Third, and Twelfth Counts of plaintiffs’ Second Amended Complaint “in the exercise of the Court’s discretion.” Dkt. 134, ¶ 8.

While plaintiffs do not oppose BNY’s joinder in the Commonwealth Officer Defendants’ motion, plaintiffs respectfully oppose BNY’s request for a stay. BNY’s arguments, asserted directly and by reference to the Commonwealth Officer Defendants’ motion to stay, are meritless for the reasons previously set forth in detail in plaintiffs’ opposition to the Commonwealth Officer Defendants’ stay motion. See Dkt. 127. This action is not stayed by PROMESA, and there is no sound basis for this Court to impose a stay not contemplated by the statute’s express stay provisions.\*

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BNY’s motion to stay this action should be denied.

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\* It is unclear whether BNY’s motion for joinder implicitly incorporates arguments asserted by the Commonwealth Officer Defendants in subsequent filings supplementing their November 7, 2014, motion to stay. See Dkts. 106, 157. In any event, those supplemental filings err in their reliance on this Court’s rulings in the cases consolidated with *Brigade Leveraged Capital Structures Fund Ltd., et al. v. García Padilla, et al.*, Civ. No. 16-1610, and *Peaje Invs. LLC v. García Padilla, et al.*, Civ. No. 16-2365. The Court’s decisions in the *Brigade* and *Peaje* consolidated cases involved whether the plaintiffs there had established “cause” to allow them to *lift* the stay with respect to claims that *are* subject to the PROMESA stay. See Dkt. 140 in Civ. No. 16-1610, at 2, 14; Dkt. 74 in Civ. No. 16-2365, at 4-5. The Court’s resolution of that question does not inform the logically antecedent question of whether the claims at issue in this case are subject to the PROMESA stay in the first place. For the reasons we have previously explained, they are not. See Dkt. 127, at 5-13.

December 16, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE: It is hereby certified 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 counsel of record which are CM/ECF system participants at their corresponding e-mail addresses and which, pursuant to Local Civil Rule 5.1(b)(2), constitutes the equivalent service.

/s/ Donald Burke  
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