

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

FINANCIAL GUARANTY
INSURANCE COMPANY,

Plaintiff,

-against-

ALEJANDRO GARCÍA PADILLA, JUAN C.
ZARAGOZA GÓMEZ, INGRID RIVERA
ROCAFORT, MELBA ACOSTA FEBO, LUIS F.
CRUZ BATISTA, VÍCTOR A. SUÁREZ MELÉNDEZ,
CÉSAR A. MIRANDA RODRÍGUEZ, JUAN FLORES
GALARZA, and JOHN DOES 1-40,

Defendants.

No. 16-1095

**RESPONSE OF FINANCIAL GUARANTY
INSURANCE COMPANY TO NOTICE OF AUTOMATIC STAY**

Plaintiff Financial Guaranty Insurance Company (“**FGIC**”), by its attorneys Rexach & Picó, CSP and Butler Snow LLP, submits this *Response of Financial Guaranty Insurance Company to Notice of Automatic Stay* (the “**Response**”) to the *Notice of Automatic Stay* [Dkt. # 66] (the “**Notice**”)¹ filed by defendants Hon. Alejandro García Padilla, Hon. Juan C. Zaragoza Gómez, Hon. Ingrid Rivera Rocafort,² Hon. Melba Acosta Febo, Hon. Luis F. Cruz Batista, Hon. Víctor A. Suárez Meléndez, Hon. César A. Miranda Rodríguez, Hon. Juan Flores Galarza, and Hon. Alberto Bacó Bagué³ (collectively, “**Defendants**”).

¹ All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms as in the Notice.

² On October 17, 2016, defendant Hon. Ingrid Rivera Rocafort filed a *Motion to Join “Notice of Automatic Stay”* [Dkt. # 69] (the “**Rocafort Motion**”). The Court granted the Rocafort Motion on October 17, 2016 [Dkt. # 70].

³ On October 17, 2016, defendant Hon. Alberto Bacó Bagué filed a *Motion to Join “Notice of Automatic Stay”* [Dkt. # 67] (the “**Bagué Motion**”). The Court granted the Bagué Motion on October 17, 2016 [Dkt. # 68].

As certain of the Defendants have previously represented to this Court, a notice of automatic stay is “not intended as a moving paper,” rather it simply provides “notice of the applicability of PROMESA’s stay provisions” in the view of the party filing the notice to the Court and all parties in interest.⁴ Defendants now seek improperly to inject substantive arguments into the Notice filed in this case.

Out of an abundance of caution, FGIC objects to Defendants’ improper attempt to raise substantive arguments in the Notice, denies each and every allegation in the Notice that challenges this Court’s subject matter jurisdiction or that otherwise alleges mootness, and reserves all rights.

The Notice, as certain of the Defendants have previously represented to this Court, is not a motion. The Notice is akin to a notice or suggestion of bankruptcy, *i.e.*, “a pleading by which a party notifies the court that the party has filed for bankruptcy and that, because of the automatic stay provided by the bankruptcy laws, the court cannot take further action in the case.” Black’s Law Dictionary (8th ed.2004). The filing of a notice or suggestion of bankruptcy in no way terminates the action “in favor of one party over the other, or in any way pass[es] upon the merits of the action.” *In re Lamb*, 409 B.R. 534, 540–41 (Bankr. N.D. Fla. 2009). The Notice may only apprise the Court and the parties in interest in this case of the existence and application of the automatic stay under PROMESA. Any surplus averments are inappropriate and should be disregarded by the Court.

Moreover, Defendants’ “mootness” allegations are not properly before the Court. *See* Fed. R. Civ. P. 7 (“A request for a court order *must* be made by motion.”) (Emphasis supplied). In this stage of the case, “[t]he proper vehicle for challenging a court’s subject-matter jurisdiction

⁴ *Motion for Reconsideration of Order Regarding Stay Under PROMESA* [Dkt. # 34], pg. 4, filed in *Lex Claims, LLC et al. v. Alejandro García Padilla et al.*, in the United States District Court for the District of Puerto Rico; Civil No. 16-2374 (FAB).

is Federal Rule of Civil Procedure 12(b)(1).” *Valentin v. Hosp. Bella Vista*, 254 F.3d 358, 362 (1st Cir. 2001); *see also Suren-Millan v. United States*, 38 F. Supp. 3d 208, 212 (D.P.R. 2013) (“A challenge under Rule 12(b)(1) constitutes a challenge to the federal court’s subject-matter jurisdiction, which may include ripeness, mootness, and sovereign immunity.”). In contrast to standing, “the burden of establishing mootness rests on the party raising the issue.” *Rhode Island Ass’n of Realtors, Inc. v. Whitehouse*, 199 F.3d 26, 34 (1st Cir. 1999) (citations omitted). And “[t]his burden is heavy.” *Id.* The Notice is clearly not a Rule 12(b)(1) motion.

FGIC acknowledges that certain provisions of Section 2194 of PROMESA that create an automatic stay on litigation apply to this case in its current form. FGIC reserves all rights, however, including but not limited to the right to seek relief from the stay.

Date: October 27, 2016

REXACH & PICÓ, CSP

By: /s/ María E. Picó

María E. Picó
USDC-PR 123214
802 Ave. Fernández Juncos
San Juan PR 00907-4315
Telephone: (787) 723-8520
Facsimile: (787) 724-7844
E-mail: mpico@rexachpico.com

BUTLER SNOW LLP

By: /s/ Stanford G. Ladner

Stanford G. Ladner (*pro hac vice*)
1700 Broadway, 41st Floor
New York, NY 10019
Telephone: (646) 606-3996
Facsimile: (646) 606-3995
E-mail: stan.ladner@butlersnow.com

Christopher R. Maddux (*pro hac vice*)
J. Mitchell Carrington (*pro hac vice*)
1020 Highland Colony Parkway, Suite 1400
Ridgeland, MS 39157
Telephone: (601) 985-2200
Facsimile: (601) 985-4500
E-mail: chris.maddux@butlersnow.com
mitch.carrington@butlersnow.com

*Attorneys for Financial Guaranty Insurance
Company*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing pleading with the Clerk for the United States District Court for the District of Puerto Rico using the Court's CM/ECF system. Participants in this case who are registered CM/ECF users will be served by the CM/ECF system.

Dated: October 27, 2016

Respectfully submitted,

By: /s/María E. Picó
María E. Picó
USDC-PR 123214
802 Ave. Fernández Juncos
San Juan PR 00907-4315
Telephone: (787) 723-8520
Facsimile: (787) 724-7844
E-mail: mpico@rexachpico.com