

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE EXPORT-IMPORT BANK OF THE
REPUBLIC OF CHINA,

Judgment Creditor,

-against-

GRENADA,

Judgment Debtor.

06-CV-2469 (HB) (AJP)

**AFFIDAVIT OF AMBROSE PHILLIP IN
SUPPORT OF JOINT MOTION TO
VACATE RESTRAINING NOTICES**

I, AMBROSE PHILLIP, state under penalty of perjury as follows:

1. I am the General Manager of the Grenada Ports Authority (“GPA”). I make this affidavit from personal knowledge except as to statements made on information and belief, and as to such statements, I believe them to be true.

2. The GPA was created in December 1990 pursuant to the Ports Authority Act (“PAA”). As stated in PAA § 18, the GPA “is . . . empowered to provide . . . a coordinated and integrated system of ports, lighthouse and port services” to Grenada.

3. Pursuant to its authority under the PAA, various administrative regulations, and other statutes and acts of the Government of Grenada, the GPA is empowered, among other things, to collect the following fees and charges (“Port Charges”) from the cruise lines and other companies that that utilize the facilities and services offered at Grenada’s sea ports:

Fee/Charge	Purpose
Pilotage	Pilot’s fee for ship navigation
Moorings	Cost for the line that secures the bow of a boat or ship to a wharf
Pratique	Fee for health certification of ship entering port.
Clearance	Permission for a ship to proceed, as after an inspection.
Navigational Aids	Fees charged for the provision of marine navigation aids (buoys, lighthouse, etc.) in Grenada
Port Fees	Fees charged for use of Port of Grenada
Berth Occupancy	Fee charged for the use of a wharf and its facilities
Overtime	Overtime wages paid to launch crews
Cruise Ship Levy	Per Passenger head tax/levy for support of cruise ship services

	and facilities
Environmental Levy	Per Passenger head tax/levy for support of Solid Waste Management Authority operations

4. The following cruise lines and shipping companies are those which are, at present, obligated to make the above-referenced payments: Carnival, Princess, Holland America, P&O Cruises, Costa Cruise Lines, Cunard, and Aida Cruises (“Cruise Lines”).

5. Each Cruise Line subject to these Port Charges is responsible for their remittance to the GPA. The GPA submits monthly billings for total charges owed by each Cruise Line to the Cruise Lines’ agent. The Cruise Lines pay all charges directly to the GPA through their agent.

6. It is my understanding that the Export-Import Bank of the Republic of China (“EX-IM”) has served restraining notices on each of the Cruise Lines, and that these restraining notices call for the restrained entities to cease making any and all payments that they are required to make in conjunction with their operations in Grenada. It is my understanding that basis for these demands is EX-IM’s assertion that the government of Grenada, a judgment debtor to EX-IM, may have an interest in payments made by these entities with respect to their Grenadian operations, which EX-IM contends renders the payments attachable under the appropriate law in enforcement of EX-IM’s judgment.

7. Whatever interest the government of Grenada may or may not have in property held by these restrained entities, it has no such interest in the Port Charges. As noted, the Port Charges are owed to the GPA and remitted by the Cruise Lines directly to the GPA, not to the government of Grenada. In spite of these facts, it is my understanding that the Cruise Lines are all complying with the EX-IM restraining notices and are withholding the above-referenced

payments from the GPA despite their continued use of Grenada's seaport and facilities, all of which are, as noted, managed, operated, and maintained by the GPA.

8. The GPA is neither an analog for Grenada, nor part of the government of Grenada. As established under the PAA, the GPA is a legally independent corporate entity with a completely separate juridical existence from the government of Grenada. The GPA can sue and be sued, own property, and borrow, lend, and invest funds, all in its own name. The GPA is run by a six-member board, which has the typical powers any private sector corporation's board has. Principally, the board appoints and oversees the General Manager, who functions much like a typical corporate chief executive officer.

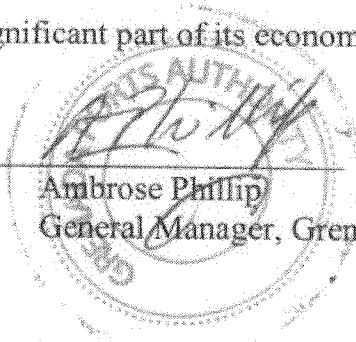
9. As General Manager of the GPA, I report to and am answerable to the GPA board, but I am principally in charge of the day-to-day operations of the GPA, including the hiring and firing of GPA employees, negotiation with and collection of Port Charges from the Cruise Lines, and maintenance of GPA-run port facilities. The government of Grenada plays little or no role in these day-to-day operations, instead providing only general policy guidance and oversight functions as to major expenditures proposed by the GPA, and with respect to reviewing the GPA annual budget and fiscal projections.

10. The GPA also has no relation to the underlying dispute between EX-IM and Grenada. The GPA was not a party to any of the loan agreements at issue in the dispute, nor was it otherwise responsible for making any payments to EX-IM or any other entity in relation to those loans. EX-IM did not name the GPA as a party in its lawsuit, nor, on information and belief, are any of EX-IM's allegations related in any way to any action, inaction, or conduct of the GPA or any of its officers, directors, members or employees. In short, the GPA had no

11. The revenues of the GPA – including all funds collected from Port Charges – are used to cover the GPA’s operating costs and expenses associated with the maintenance and operation of Grenada’s seaport infrastructure and related facilities and services. For example, Port Fees are used to pay operations and maintenance fees, and for general administrative expenses such as salaries and utilities payments. The Cruise Ship Levy is a per passenger tax, the proceeds of which are used to service loan commitments for the main Grenadian cruise ship terminal. The Environmental Levy is a tax collected by the GPA and then remitted to the Solid Waste Management Authority for use by that entity in maintaining Grenada’s solid waste disposal systems and facilities.

12. The revenue collected from the above-referenced fees – ordinarily paid by the restrained entities – represents a substantial and significant portion of the GPA’s total revenues. Any deprivation of the GPA of these funds as a result of EX-IM’s restraining notices will significantly hamper the GPA’s ability to fulfill its mission to effectively operate, maintain and manage Grenada’s seaport system. It’s failure to do so would have decidedly negative impacts on Grenada, which, as a small Caribbean island nation, is particularly dependent upon tourism, in general, and cruise tourism, in particular, for a significant part of its economy.

Dated: March 16, 2012



Ambrose Phillip
General Manager, Grenada Ports Authority

Sworn to before me this
16th day of March, 2012

Bella Zard J. Q.C.
Notary Public

