

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE HONORABLE OTTO J. REICH and,
OTTO REICH ASSOCIATES, LLC,

Plaintiffs,

v.

LEOPOLDO ALEJANDRO BETANCOURT
LOPEZ, PEDRO JOSE TREBBAU LOPEZ,
and FRANCISCO D'AGOSTINO CASADO,

Defendants.

No. 13 CV 5307 (JPO)

DECLARATION OF
MARK W. SMITH, ESQ.

Defendants' Public Filing

I, MARK W. SMITH, declare under the penalties of perjury under the laws of the United States of America that the below is true and correct:

1. I am an attorney duly admitted to practice before the courts of the State of New York and this Court, and a member of the law firm of Smith Valliere PLLC, attorneys for Plaintiffs the Honorable Otto J. Reich and Otto Reich Associates, LLC (together, "Plaintiffs") in the above-referenced action.

2. I make this declaration in opposition to the Renewed Motions of Leopoldo Alejandro Betancourt Lopez ("Betancourt") and Pedro Jose Trebbau Lopez ("Trebbau") To Dismiss For Lack Of Personal Jurisdiction Pursuant To Rule 12(b)(2) (the "Motions").

3. Attached hereto as Exhibit 1 is a true and correct copy of the deposition transcript of Betancourt with errata sheet.

4. Attached hereto as Exhibit 2 is a true and correct copy of the deposition transcript of Trebbau.

5. Attached hereto as Exhibit 3 is a true and correct copy of select pages from the deposition transcript of Francisco D'Agostino Casado ("D'Agostino").
6. Attached hereto as Exhibit 4 is a true and correct copy of Trebbau's Responses to Plaintiffs' First Set of Interrogatories.
7. Attached hereto as Exhibit 5 is a true and correct copy of Trebbau's Supplemental Responses to Interrogatory Nos. 1 and 5 of Plaintiffs' First Set of Interrogatories.
8. Attached hereto as Exhibit 6 is a true and correct copy of Trebbau's Responses to Plaintiffs' Second Set of Interrogatories Concerning Personal Jurisdiction Only.
9. Attached hereto as Exhibit 7 is a true and correct copy of the Declaration of Trebbau in Support of the Motion by Betancourt and Trebbau to Stay Obligations to Answer.
10. Attached hereto as Exhibit 8 is a true and correct copy of Betancourt's Responses to Plaintiffs' First Set of Interrogatories.
11. Attached hereto as Exhibit 9 is a true and correct copy of Betancourt's Supplemental Responses to Plaintiffs' First Set of Interrogatories.
12. Attached hereto as Exhibit 10 is a true and correct copy of Betancourt's Responses to Plaintiffs' Second Set of Interrogatories.
13. Attached hereto as Exhibit 11 is a true and correct copy of the Declaration of Betancourt in Support of the Motion by Betancourt and Trebbau to Stay Obligations to Answer.
14. Attached hereto as Exhibit 12 is a true and correct copy of the Summons and Complaint captioned *Derwick Associates Corporation, Leopoldo Alejandro Betancourt Lopez and Pedro Trebbau Lopez, v. John Does 1-10* (Supreme Court of the State of New York, County of New York), Index No. 653345/12.

15. Attached hereto as Exhibit 13 is a true and correct copy of a List of Contractors dated July 2, 2013, which was produced by De La Garza Architecture LLC.

16. Attached hereto as Exhibit 14 is a true and correct copy of the November 23, 2010 Closing Statement, which was produced by Platte, Klarsfeld, Levine & Lachtman LLP.

17. Attached hereto as Exhibit 15 is a true and correct copy of the Board Package submitted by Betancourt to the Members of the Board, Olympic Tower Condominium, which was produced by Douglas Elliman Property Management.

18. Attached hereto as Exhibit 16 is a true and correct copy of an October 12, 2010 Letter from J.P.Morgan to the Members of the Board, Olympic Tower Condominium, which was produced by Douglas Elliman Property Management.

19. Attached hereto as Exhibit 17 is a true and correct copy of Betancourt's Personal Financial Statement, which was produced by Douglas Elliman Property Management.

20. Attached hereto as Exhibit 18 is a true and correct copy of the Seller Information Sheet, which was produced by Douglas Elliman Property Management.

21. Attached hereto as Exhibit 19 is a true and correct copy of the September 14, 2010 letter of recommendation from Maira Brito of J.P.Morgan addressed to Members of the Board, Olympic Tower Condominium, which was produced by Douglas Elliman Property Management.

22. Attached hereto as Exhibit 20 is a true and correct copy of the September 24, 2010 letter from David E. Levine of Platte, Klarsfeld, Levine & Lachtman, LLP to the Board of Managers, The Olympic Tower Condominium, which was produced by Douglas Elliman Property Management.

23. Attached hereto as Exhibit 21 is a true and correct copy of the Project Team List, which was produced by De la Garza Architecture LLC.

24. Attached hereto as Exhibit 22 is a true and correct copy of the List of Subcontractors dated June 21, 2011, which was produced by De la Garza Architecture LLC.

25. Attached hereto as Exhibit 23 is a true and correct copy of Sotheby's November 12, 2012 Invoice Number 92167797, which was produced by Sotheby's, Inc.

26. Attached hereto as Exhibit 24 is a true and correct copy of the March 2011 Olympic Tower Alteration Projects Log, which was produced by Douglas Elliman Property Management.

27. Attached hereto as Exhibit 25 is a true and correct copy of the April 2013 Olympic Tower Alteration Projects Log, which was produced by Douglas Elliman Property Management.

28. Attached hereto as Exhibit 26 is a true and correct copy of the Penthouse Six Event Log, which was produced by Douglas Elliman Property Management.

29. Attached hereto as Exhibit 27 is a true and correct copy of November 2, 2014 FINRA's CRD for Eduardo Travieso, which was produced by FINRA.

30. Attached hereto as Exhibit 28 is a true and correct copy of an October 1, 2012 letter from Peter Gonzalez, Examination Manager at FINRA, addressed to Ms. Lara M. Leaf, Director, Credit Suisse Securities USA, LLC, which was produced by FINRA.

31. Attached hereto as Exhibit 29 is a true and correct copy of the April 25, 2011 Closing Statement, which was produced by Platte, Klarsfeld, Levine & Lachtman LLP.

32. Attached hereto as Exhibit 30 is a true and correct copy of the May 22, 2012 Closing Statement, which was produced by Platte, Klarsfeld, Levine & Lachtman LLP.

33. Attached hereto as Exhibit 31 is a true and correct copy of the First Amended Complaint captioned *Derwick Associates Corporation, Leopoldo Alejandro Betancourt Lopez and Pedro Trebbau Lopez, v. Venezolano de Credito, S.A., Banco Universal, Oscar Garcia Mendoza, Rafael Alfonzo Hernandez, Cesar Briceño Lopez, Venecredit Securities Inc., Oscar Jose Garcia-Nevett, Joel Alejandro Cloralt Flores, The Z Company.com, Inc. and John Does 1-10* (Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, General Jurisdiction Division), Case No. 12-36297 CA 11.

34. Attached hereto as Exhibit 32 is a true and correct copy of the October 15, 2010 letter from Douglas Elliman to the Board of Managers at Olympic Tower, which was produced by Douglas Elliman Property Management.

35. Attached hereto as Exhibit 33 is a true and correct copy of the August 9, 2014 *Wall Street Journal* article by Jose de Cordoba titled "Venezuelan Firm Is Probed in U.S."

36. Attached hereto as Exhibit 34 is a true and correct copy of the November 7, 2012 letter from Jorge Aguilo, CEO & Pricipal, of CG Compass (USA) LLC addressed to Mr. Peter Gonzalez, Examination Manager, FINRA, which was produced by FINRA.

37. Attached hereto as Exhibit 35 is a true and correct copy of the April 4, 2013 letter from Betancourt appointing Javier de la Garza as his agent in New York, which was produced by De la Garza Architecture LLC.

38. Attached hereto as Exhibit 36 is a true and correct copy of the First Amended Complaint in this action.

39. Attached hereto as Exhibit 37 is a true and correct copy of the agreement between AfterHim Media LLC and PR Newswire Association LLC, which was produced by PR

Newswire Association LLC, as well as other documents produced by AfterHim Media LLC and PR Newswire Association LLC.

40. Attached hereto as Exhibit 38 is a true and correct copy of the Olympic Tower Resident Lookup, which was produced by Douglas Elliman Property Management.

41. Attached hereto as Exhibit 39 is a true and correct copy of the November 3, 2014 letter from Valentina Judge, FINRA.

42. Attached hereto as Exhibit 40 are true and correct copies of December 31, 2014 letters from Lizette Katilius, Office of FOIA Services, United States Securities and Exchange Commission.

43. Attached hereto as Exhibit 41 is a true and correct copy of a September 26, 2013 www.forbes.com article by Hillary Kramer, titled "Changing Balance Of Power May Unlock Venezuela's Markets."

44. Attached hereto as Exhibit 42 is a true and correct copy of the April 2011 Guaranty executed by Betancourt with J.P.Morgan, which was produced by Platte, Klarsfeld, Levine & Lachtman LLP.

45. Attached hereto as Exhibit 43 is a true and correct copy of the Written Consent of Sole Managing Member of BL 641 FIFTH, LLC dated March 2011, which was produced by Platte, Klarsfeld, Levine & Lachtman LLP.

46. Attached hereto as Exhibit 44 is a true and correct copy of the Douglas Elliman Notification Letter (for Closing dated November 23, 2010), which was produced by Platte, Klarsfeld, Levine & Lachtman LLP.

47. Attached hereto as Exhibit 45 is a true and correct copy of a Verizon invoice to Betancourt dated May 28, 2012, which was produced by De la Garza Architecture LLC.

48. Attached hereto as Exhibit 46 is a true and correct copy of the Walter P. Sauer LLC Contract Summary dated March 12, 2012, which was produced by De la Garza Architecture LLC.

49. Attached hereto as Exhibit 47 is a true and correct copy of the January 5, 2013 4:38 AM email from [REDACTED], which was produced by De la Garza Architecture LLC.

50. Attached hereto as Exhibit 48 is a true and correct copy of the Affidavit of Service upon Betancourt at 641 Fifth Avenue, New York, N.Y.

51. Attached hereto as Exhibit 49 is a true and correct copy of a subset of documents produced by FINRA, Bates labeled CSSU000001-51.

52. Attached hereto as Exhibit 50 is a true and correct copy of select documents produced by Betancourt.

53. Attached hereto as Exhibit 51 is a true and correct copy of select documents produced by Trebbau.

54. Attached hereto as Exhibit 52 is a true and correct copy of the Agreement to Renovate between Betancourt and D.H.E. Company, Inc., dated June 15, 2011 – produced by Douglas Elliman.

55. Attached hereto as Exhibit 53 is a true and correct copy of the email dated March 31, 2011 3:36 PM from [REDACTED] to Eugene P. Bellon, cc: Jacklyn Auerbach and Javier de la Garza, with the Olympic Tower Condominium Alteration Agreement signed by Betancourt.

56. Attached hereto as Exhibit 54 is a true and correct copy of the United States Department of State Venezuela 2013 Human Rights Report.

57. Attached hereto as Exhibit 55 is a true and correct copy of the United States Department of State Venezuela Travel Warning (last updated December 11, 2014).

58. Attached hereto as Exhibit 56 are true and correct copies of the signed Affidavits of the Custodian of Records for each of the following: Douglas Elliman Property Management; De La Garza Architecture LLC; Financial Industry Regulatory Authority Inc.; Sotheby's, Inc.; and Platte, Klarsfeld, Levine & Lachtman LLP.

59. Attached hereto as Exhibit 57 are webpages showing that RBC has New York offices and accounts.

60. Attached hereto as Exhibit 58 are letters from Smith Valliere PLLC addressed to the Honorable J. Paul Oetken concerning discovery.

61. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on:
January 15, 2015.



MARK W. SMITH