

In the  
Supreme Court of the United States

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VIRGINIA SILVA-NAVARRO,

*Petitioner,*

—v—

ROOSEVELT REO PR CORPORATION ET AL.,

*Respondents.*

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the First Circuit

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**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED**

1. Are lower courts in the federal system to follow the case law of this Honorable Court? Or, the case law of this Honorable Court is merely persuasive, and not binding on the lower courts?
2. Can the U.S. District Court for the District of Puerto Rico deprive the Commonwealth of Puerto Rico of the collection of taxes?
3. Can a company from a foreign nation appear as plaintiff in a diversity jurisdiction case without complying with the requirements established by the applicable case law of this Honorable Court?
4. Can a U.S. District Court impair the powers of the President as head of the Executive Branch, by not requiring the verification of foreign officers' signatures from embassy or consular officers of the United States?
5. Can a U.S. District Court deprive The United States of America of a legitimate tax lien on a real estate property, based on an illegal foreclosure action based on an alleged senior lien held by a foreign entity not a juridical person?

## **PARTIES TO THE PROCEEDINGS**

### **Petitioner and Defendant-Appellant below**

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- Virginia Silva-Navarro

### **Respondents and Plaintiffs-Appellee below**

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- Roosevelt REO PR Corp.

### **Respondent and Plaintiff below**

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- Roosevelt Cayman Asset Company

### **Respondent and Defendants below**

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- United States of America
- Milton Silva-Navarro
- Isabel Lugo-Velez

## LIST OF PROCEEDINGS

United States Court of Appeals for the First Circuit  
No. 20-1442

Roosevelt REO PR Corporation, *Plaintiff-Appellee*,  
Roosevelt Cayman Asset Company, *Plaintiff*, v.  
Virginia Silva-Navarro, *Defendant-Appellant*, Milton  
Silva-Navarro; Isabel Lugo-Velez; Conjugal  
Partnership Silva-Lugo; United States, *Defendants*.

Date of Final Judgment: May 6, 2022

Date of Rehearing Denial: September 2, 2022

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United States District Court for the District of  
Puerto Rico

Civil No. 16-1036 (ADC)

Roosevelt REO PR, Corp., *Plaintiff*, v. Virginia Silva-  
Navarro, Milton Silva-Navarro, and the Conjugal  
Partnership Between Them, United States of  
America, *Defendants*.

Date of Final Opinion and Order: March 25, 2020

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## **PETITION FOR A WRIT OF CERTIORARI**

Con los pobres de la tierra  
Quiero yo mi suerte echar  
    El arroyo de la sierra  
Me complace más que el mar  
(With the poor of the Earth  
    I want to cast my lot  
    The stream of the sierra  
Pleases me more than the sea)

– José Martí, New York City 1887

Ms. Virginia Silva-Navarro respectfully petitions for a writ of certiorari to review the judgment of the United States District Court for the District of Puerto Rico, confirmed by the United States Court of Appeals for the First Circuit without a hearing and without an Opinion.



## **OPINIONS BELOW**

The United States Court of Appeals for the First Circuit entered its judgment on May 6, 2022, and is included at App.1a. The Opinion and Order of the United States District Court for the District of Puerto Rico, filed March 25, 2020, denying motions to set aside judgment, is included at App.3a. The district court Order denying a motion to stay eviction, filed December 17, 2019, is included at App.19a. These opinions and orders were not designated for publication.



## STATEMENT OF JURISDICTION

The court of appeals denied the rehearing *en banc* of the order denying the appeal on September 2, 2022. (App.28a). This Court has jurisdiction under 28 U.S.C. § 1254.



## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### A. Constitutional Provisions

#### U.S. Const. Art II, cl. 2

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; **he shall receive Ambassadors and other public Ministers**; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

#### U.S. Const. Article III:

The judicial Power shall extend to all Cases, in Law and Equity . . . between Citizens of different States . . .

**U.S. Const. Art IV., Sec. 3, cl. 2**

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

**U.S. Const. Art VI, cl. 2**

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

**B. Statutory Provisions****P.R. Laws tit. 31, § 4 (4 LPRA 31)**

Acts executed contrary to the provisions of law are void except when the law preserves their validity.

**P.R. Laws tit. 31, § 5 (5 LPRA 31)**

Laws shall only be repealed by means of subsequent laws; and disuse, custom or practice to the contrary shall not impede their enforcement.

Laws may be repealed either entirely or in part by other laws.

**P.R. Laws tit. 4, § 2021 (4 LPRA 2021)**

Barring the exceptions established by law, . . . The deed or certified copies of it shall be voidable or ineffective if the corresponding stamps are not attached to it or if any method established by the Secretary of the Treasury in substitution of the affixing of the seals required by law is not observed.

**P.R. Laws tit. 7, § 1366g(3) (7 LPRA 1366g(3))**

Cooperatives and their subsidiaries or affiliates shall be exempted from the payment of state or municipal fees, duties or tariffs, including the payment of fees for licenses, patents, permits and registrations; the payment of charges, fees, internal revenue stamps

**48 U.S.C. § 872**

The supreme and district courts of Puerto Rico and the respective judges thereof may grant writs of habeas corpus in all cases in which the same are grantable by the judges of the district courts of the United States, and the district courts may grant writs of mandamus in all proper cases.

No suit for the purpose of restraining the assessment or collection of **any** tax imposed by the laws of Puerto Rico shall be maintained in the United States District Court for the District of Puerto Rico.

**P.R. Laws tit. 32, § 1481 (32 LPRA 1481)P.R.**

Each and every document or petition which requires the payment of a court filing fee shall be null and void, and shall not be admitted as

evidence in trial unless such payment is duly evidenced, pursuant to the rules established by the Chief Justice of the Supreme Court or the person onto whom he/she so delegates.<sup>1</sup>

### **C. Other Background Provisions**

#### **Puerto Rico Code of Commerce**

##### **P.R. Laws tit. 10, § 1347:**

As a general rule, partnerships and civil corporations shall be established under any of the following forms:

**(1) As a general [partnership, not in the original] (English correct translation: regular collective)** in which all the partners collectively,

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<sup>1</sup> Todos y cada uno de los documentos o escritos que requieran el pago de derechos para su presentación ante el tribunal serán nulos y sin valor y no se admitirán como prueba en juicio a menos que dicho pago esté debidamente evidenciado, conforme a las normas que a tales fines establezca el(la) Juez(a) Presidente(a) del Tribunal Supremo o la persona en quien éste(a) delegue.

The official translation does not convey the meaning of the original in Spanish, the underlined text should be translated as follows:

“Each and everyone of the documents or writings that require the payment of fees (not “court filing fee”) for its presentment to the court shall be null and without value and shall not be admitted as proof at trial...”

A public deed is a “document” that requires the payment of fees in the form of Internal Revenue Stamps.

Undersigned is a Notary Public, and such, can make translations pursuant to P.R. Laws tit. 4, 2091: Testimony or statement of authenticity is the document through which a notary, at the request of an interested party, may notarize a non-original document, in addition to the date of the testimony:

and under a firm name, bind themselves to share the same rights and obligations in the proportion they may establish.

(2) As special **[partnership, not in the original]** (**English correct translation: commenda**) in which one or several persons contribute a specific amount of capital to the common fund, to share in the results of the firm's transactions carried out exclusively by others under a collective name.

(3) As a limited partnership **[partnership, not in the original]** (**English correct translation: limited**) regulated by a special law, in which the partners shall be liable for corporate liabilities with their payment or in which they shall be bound to contribute to the company or partnership. In the case of professional partnerships, the limited liability of each partner, shall not be extended to the obligations arising from the exercise of the profession.

Partnerships may also be established in corporate form in accordance with the special law expressly authorizing it.

**P.R. Laws tit. 10, § 1341 (Code of Commerce article 95):**

Articles of association by which two or more persons obligate themselves to place in a common fund any property, industry, or any of these things, in order to obtain profit, shall be commercial, no matter what its class may be, provided it has been established in accordance with the provisions of this Code.

After a commercial association has been established, it shall have legal representation (**correct translation: juridical personality**) in all its acts and contracts.

**P.R. Laws tit. 10, § 1344, Code of Commerce article 98):**

Every commercial association before beginning business shall be obliged to record its establishment, agreements, and conditions in a public instrument, which shall be presented for record in the mercantile registry, in accordance with the provisions of § 1032 of this title.

Additional instruments which modify or alter in any manner whatsoever the original contracts of the association are subject to the same formalities, in accordance with the provisions of § 1039 of this title.

Partners cannot make private agreements, but all must appear in the articles of copartnership.

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## INTRODUCTION

The case at bar is a foreclosure proceeding where Petitioner is trying to keep a roof over her head. Her home, an apartment, was foreclosed by a foreign entity: Roosevelt Cayman Asset Company that did not qualify to file a diversity jurisdiction case because it is not a person. Why is a run of the mill foreclosure case worth looking at by this Honorable Court? Because an undetermined number of persons in Puerto Rico (and in the rest of the United States for that matter), are losing their homes even though the alleged creditor (and a foreign one) does not comply with the laws that would make them a person, and if you are not a person (physical or juridical) you cannot come to federal court to claim diversity jurisdiction.

The United States of America has in a number of cases, a junior lien, below in rank to the first mortgage, but if the foreclosure of the first mortgage is illegal, why does the United States lose its lien?

The original plaintiff, *supra*, after it obtained judgment, it assigned it to Roosevelt REO PR, Corp. (hereinafter REO), then it sold the property to Forteza Equity Partners I, LLC, and it, in turn sold it to Forteza Equity Partners Reo I, LLC, nevertheless the two limited liability companies are not third parties to the controversies, because in the deeds of sale by which Petitioner's apartment was sold and resold, the personal representative of both limited liability companies is co-counsel for respondents Cayman, and REO: Mr. Reggie Díaz Hernández. (Deed 38 of Notary Yolanda Idali Martínez-Delgado of March 15, 2022).

The judgment was entered without jurisdiction, against a specific decision of this Honorable Court which the U.S. District Court of Puerto Rico did not follow, and against the Territorial Clause of the United States Constitution for not complying with the Puerto Rico Federal Relations Act which states that it cannot deprive Puerto Rico from collecting and assessing taxes. A sovereign decision by the Congress of the United States of America to restrain the Judicial Branch from interfering with the Commonwealth of Puerto Rico from collecting taxes (any), is a clear violation of the separation of powers. As it is with the situation in which documents from a foreign country are admitted in evidence without being certified by a U.S. embassy or consular officer. It is for the President to determine how to conduct foreign policy. Can a U.S. District Court admit into evidence a document issued by a territorial division of a foreign nation not recognized by the United States, like, for example, documents issued by state offices of Russian occupied Ukraine?



## STATEMENT OF THE CASE

### A. The United States District Court for the District of Puerto Rico, failed to apply state law in a diversity jurisdiction case.

The United States District Court for the District of Puerto Rico, acknowledged the violation of state law in the case at bar, which is a diversity jurisdiction case, by stating:

Silva-Navarro's arguments for relief of judgment due to 'nullity of the Mortgage Deed are thus unavailing. However, Silva-Navarro is not without recourse. She has adequate venues available under state law to challenge any purported notarial wrongdoing. (App.16a-17a).

Beg to differ: this Honorable Court has decided that, in a diversity jurisdiction case, the United States courts have to apply the applicable state law, *Eire Railroad Company v. Tompkins*, 304 U.S. 64 (1938), at pages 78-79:

[3] *Third.* Except [\*\*\*\*27] in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State.

Federal law intertwined issue with Puerto Rico law, the U.S. District Court failed to apply the Federal Relations Act, 48 U.S.C. § 872 which bars said court to entertain a case to deprive the People of Puerto Rico of collection of taxes, in the present case, the

document tax of the Internal Revenue, Legal Aid, and Notarial stamps.

The U.S. District Court for the District of Puerto Rico, recognized as valid a purported “custom” or “practice” in Puerto Rico that a certified copy is not required to pay document tax, so decided, quoting the plaintiff:

common practice in the industry [dictates] that right after the execution of a mortgage, the notary gives to each party a simple copy of the instrument. Typically, the notary only prepares a certified copy of an instrument, such as the foreclosed mortgage, for submissions in the Property Registry. This is so, because each certified copy cancels stamps, which increases the costs of doing business.

ECF No. 83 at 5. (App.14a)

But the Civil Code of Puerto Rico, article 4, 31 LPRA.<sup>42</sup> provides otherwise:

Acts executed contrary to the provisions of law are void except when the law preserves their validity.

And Article 5, 31 LPRA 5, provides as follows:

Laws shall only be repealed by means of subsequent laws; and disuse, custom or practice to the contrary shall not impede their enforcement.

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<sup>2</sup> References in this Brief to the Civil Code of Puerto Rico, are to the 1930 Edition.

Laws may be repealed either entirely or in part by other laws. (Emphasis added)

The law that regulates notarial practice as to the cancellation of Internal Revenue, Legal Aid, and Notarial Stamps is: 4 LPRA 2021:

§ 2021. Duties of the notary-Stamps; exemptions.

Barring the exceptions established by law, . . . The deed or certified copies of it shall be voidable or ineffective if the corresponding stamps are not attached to it or if any method established by the Secretary of the Treasury in substitution of the affixing of the seals required by law is not observed.

(Emphasis added)

The United States District failed to follow the case law of the Supreme Court of the United States, in the case at bar, specifically the case of *R. H. Stearns Co. v. United States*, 291 U.S. 54 (1934), Justice Benjamín Cardoso stated the following, page 61-62:

Sometimes the resulting disability has been characterized as an estoppel, sometimes as a waiver. The label counts for little. Enough for present purposes that the disability has its roots in a principle more nearly ultimate than either waiver or estoppel—the principle that no one shall be permitted to found any claim upon his own inequity or take advantage of his own wrong. *Imperator Realty Co. v. Tull, supra.* A suit may not be built on an omission induced by him who sues. *Swain v. Seamens*, 9 Wall. 254, 76 U.S. 274; *United States v. Peck*, 102 U.S. 64; *Thomson v. Poor*,

147 N.Y. 402, 42 N.E. 13; *New Zealand Shipping Co. v. Société des Ateliers*, [1919] A.C. 1, 6; Williston, CONTRACTS, vol. 2, §§ 689, 692. 291 U.S. 54 (1932), pages 61-62. (Emphasis added)

Petitioner established, by plaintiff's own documents, that the Deed of Mortgage in this case was not initially signed by the creditor, as required by law, and requested that the U.S. District Court declared null or ineffective the Deed, and the copies filed, for that reason and for not cancelling the required document stamps. Plaintiff could not base its cause of action in its own inequity, wrong, or violation of statutory law.



## REASONS FOR GRANTING THE PETITION

### I. THE U.S. DISTRICT COURT, FAILED TO APPLY STATE LAW IN THE CASE A QUO, IN CONTRADICTION WITH *EIRE v. TOMPKINS, SUPRA*.

The present case is a foreclosure proceeding filed by a non-entity as far as the Commonwealth of Puerto Rico and the United States of America is concerned: Roosevelt Cayman Asset Company, an “exempted company” allegedly created under the legal provisions of the Cayman Islands, This document was not issued a certification by a consular authority of the United States of America, pursuant to Federal Rule of Evidence 902 (3): “A document that purports to be signed or attested by a person who is authorized by a foreign country’s law to do so. The document must be accompanied by a final certification . . . made by a secretary

of a United States embassy or legation; by a consul . . . ”  
(Emphasis added).

Plaintiff Cayman claimed: “Jurisdiction of this Court lies in diversity citizenship”. But in order to claim diversity citizenship the entity must exist as a juridical person, which is not the case in the case at bar.

Cayman and its substitute party REO filed 3 documents purporting to be the Deed of Mortgage upon which they state their claim: Deed No. 385 of September 30, 2003 before Notary Public Pablo F. Jiménez-Meléndez. None paid the document taxes: Internal Revenue, Legal Aid, and Notarial stamps, therefore with no legal value, 32 LPRA § 1481, *supra*. The plaintiffs excuse, as stated in the Opinion and Order of the U.S. District Court at App.14a:

common practice in the industry [dictates] that right after the execution of a mortgage, the notary gives to each party a simple copy of the instrument. Typically, the notary only prepares a certified copy of an instrument, such as the foreclosed mortgage, for submissions in the Property Registry. This is so, because each certified copy cancels stamps, which increases the costs of doing business. ECF No. 83 at 5.

None of the copies of Deed 385 paid the document taxes. The difference is the AMOUNT of the taxes: \$58.00 for Internal Revenue stamps, \$7.50 for the Legal Aid stamps, and \$1.00 for the Notarial stamp. So the lender decides when to pay, and when to exempt itself from the payment of document taxes. But the law in the Commonwealth of Puerto Rico is

that only the Cooperatives, among the various private financial institutions, is exempt from document taxes, 7 LPRA 1366g(3), *infra*.

Together with the preceding issue is whether the U.S. District Court is authorized to allow a litigation to proceed when it restrains the assessment or collection of the tax within the meaning of the Butler Act (codified in the Federal Relations Act), 48 U.S.C. § 872.

There are no facts on the record of this case as to the amounts of money the Commonwealth of Puerto Rico, the People of Puerto Rico, is losing from the self-declared exemption of document taxes not paid by private lenders. The Cooperatives have a specific exemption enacted by the Legislature of the Commonwealth of Puerto Rico, *supra*.

Plaintiffs have to comply with the Notarial Law, such as that the name of the signatories is not attested to by the Notary Public, nor the personal circumstances of the signatories, nor whether or not the Notary Public knows the appearing parties or how he otherwise has identified them (those facts are referred to the deed of mortgage which number was left blank in the Spanish text of the note).

Finally there is the issue of the cancellation of the junior liens in favor of the United States of America. If the mortgage note is null and void, and the copies of the mortgage deed are invalid, if there was lack of jurisdiction as to diversity jurisdiction, then the United States of America has been wronged by the cancellation of the liens in its favor since the foreclosure of the first mortgage is null and void.

## II. THE ISSUE OF LACK OF JURISDICTION.

Petitioner presented to the U.S. District Court, the argument of lack of diversity jurisdiction because the Plaintiff Cayman Asset Company, is not a corporation, does not have juridical personality, nor existence.

In order to support its position that Roosevelt Cayman Asset Company is in existence, is a corporation, the U.S. District Court presents case law of the Supreme Court of the Commonwealth of Puerto Rico (Page 8 of the Opinion and Order, docket no. 94), but failed to apply the case law of the Supreme Court of the United States, which controls in the matters related to diversity jurisdiction or lack thereof. The applicable cases are *United Steelworkers of America v. R. H. Bouligny, Inc.*, 382 U.S. 145 (1965); *Puerto Rico v. Russell & Co.*, 228 U.S. 476; *Carden v. Arkoma Assocs.*, 494 U.S. 185 (1990-Scalia), which states:

Similarly, [\*\*\*\*9] in *Great Southern Fire Proof Hotel Co. v. Jones*, 177 U.S. 449 (1900), we held that a “limited partnership association”—although possessing “some of the characteristics of a corporation” and deemed a “citizen” by the law creating it—may not be deemed a “citizen” under the jurisdictional rule established for corporations. *Id.*, at 456. “That rule must not be extended.” *Id.*, at 457. As recently as 1965, our unanimous opinion in *Steelworkers v. R.H. Bouligny, Inc.*, 382 U.S., 145, reiterated that “the doctrinal wall of *Chapman v. Barney*,” *id.*, at 151, would not be breached.

The one exception to the admirable consistency of our jurisprudence on this matter is

*Puerto Rico v. Russell & Co.*, 288 U.S. 476 (1933), which held that the entity known as a *sociedad en comandita*, created under the civil law of Puerto [\*\*190] Rico, could be treated as a citizen of Puerto Rico for purposes of determining federal-court jurisdiction. The *sociedad*'s juridical personality, we said, "is so complete in contemplation of the law of Puerto Rico that we see [\*\*\*\*10] no adequate reason for holding that the *sociedad* has a different status for purposes of federal jurisdiction than a corporation organized under that law." *Id.*, at 482.

But the "limited liability company" is NOT a corporation but a "company", and it is specifically included in article 101 of the Code of Commerce of Puerto Rico, 10 LPRA 1347, so articles 95 and 98 of said Code, 10 LPRA 1344, applies to it.

Article 95, 10 LPRA 1341 provides as follows:

Articles of association by which two or more persons obligate themselves to place in a common fund any property, industry, or any of these things, in order to obtain profit, shall be commercial, no matter what its class may be, provided it has been established in accordance with the provisions of this Code.

After a commercial association has been established, it shall have legal representation in all its acts and contracts.

Article 98, 10 LPRA 1344, provides as follows:

Every commercial association before beginning business shall be obliged to record its establishment, agreements, and conditions in a public instrument, which shall be presented for record in the mercantile registry, in accordance with the provisions of § 1032 of this title.

Additional instruments which modify or alter in any manner whatsoever the original contracts of the association are subject to the same formalities, in accordance with the provisions of § 1039 of this title. Partners cannot make private agreements, but all must appear in the articles of copartnership.

Article 101, 10 LPRA 1347 provides as follows:<sup>3</sup>

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<sup>3</sup> Again, the English translation is not correct because the Spanish text states 10 LPRA 1347:

Por regla general, las compañías mercantiles (**English translation: mercantile companies**) y las sociedades civiles (**civil partnerships**) se constituirán adoptando alguna de las siguientes formas:

- (1) La regular colectiva (**English translation: regular collective**), en que todos los socios, en nombre colectivo y bajo una razón social, se comprometen a participar, en la proporción que establezcan, de los mismos derechos y obligaciones.
- (2) La comanditaria (**commenda**), en que uno o varios sujetos aportan capital determinado al fondo común, para estar a las resultas de las operaciones sociales dirigidas exclusivamente por otros con nombre colectivo.
- (3) La limitada (**limited**) que se regula por ley especial, en la cual los socios responderán de las obligaciones sociales con lo aportado o se hubieren obligado a aportar a la compañía o sociedad. En el caso de las sociedades profesionales, la

As a general rule, partnerships and civil corporations shall be established under any of the following forms:

(1) As a general **[partnership, not in the original]** (English correct translation: **regular collective**) in which all the partners collectively, and under a firm name, bind themselves to share the same rights and obligations in the proportion they may establish.

(2) As special **[partnership, not in the original]** (English correct translation: **commenda**) in which one or several persons contribute a specific amount of capital to the common fund, to share in the results of the firm's transactions carried out exclusively by others under a collective name.

(3) As a limited partnership **[partnership, not in the original]** (English correct translation: **limited**) regulated by a special law, in which the partners shall be liable for corporate liabilities with their payment or in which they shall be bound to contribute to the company or partnership. In the case of professional partnerships, the limited liability of each partner, shall not be extended to the obligations arising from the exercise of the profession.

Partnerships may also be established in corporate form in accordance with the special law expressly authorizing it.

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limitación de responsabilidad de cada socio no se extenderá a las obligaciones que emanen del ejercicio de la profesión.

También podrán constituirse adoptando la forma corporativa, con arreglo a la ley especial que expresamente lo autorice.

### III. THE ISSUE OF DUE PROCESS OF THE LAW.

Due to the various violations of law, Petitioner has claimed those violations deprived appellant of her due process of the law under the 5th Amendment.

The U.S. District Court, for the District of Puerto Rico failed to apply state law in the case *a quo*, in clear contradiction with the decision in *Eire v. Tompkins, supra*.

Under the Territorial Clause of the U.S. Constitution, Congress provided for the Commonwealth of Puerto Rico to have revenue through the collection of taxes, so the Congress provided that the United States District Court for the District of Puerto Rico has NO authority to authorize a Claim based on a document that has not paid the document taxes depriving the People of Puerto Rico of internal revenue, which are collected with the purchase of Internal Revenue Stamps. The Federal Relations Act, 48.

48 U.S.C. § 872 provides:

§ 872. Habeas corpus; mandamus; suit to restrain assessment or collection of taxes

[ . . . ]

No suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Puerto Rico shall be maintained in the United States District Court for the District of Puerto Rico. (Emphasis added)

The private sector lenders are Not Exempted From Document Taxes, Except The Cooperatives: 7 LPRA 1366g(3):

(3) Cooperatives and their subsidiaries or affiliates shall be exempted from the payment of state or municipal fees, duties or tariffs, including the payment of fees for licenses, patents, permits and registrations; the payment of charges, fees, internal revenue stamps or vouchers related to the granting of all types of public and private documents, the payment of charges, fees, or internal revenue stamps or vouchers with regard to the registration thereof in the Property Registry or any other public registry or government office, and the payment of charges, fees internal revenue stamps or vouchers regarding the issue of certificates by said registries or any other government office. (Emphasis added)

The United States District Court failed to follow the case law of the Supreme Court of the United States, in the case at bar, which recognizes an estoppel for the type of cases as the one at bar, for violations of positive law, specifically the case of *R. H. Stearns Co. v. United States*, 291 U.S. 54 (1934), Justice Benjamín Cardoso stated the following, page 61-62<sup>4</sup>:

Sometimes the resulting disability has been characterized as an estoppel, sometimes as a waiver. The label counts for little. Enough for present purposes that the disability has its roots in a principle more nearly ultimate

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<sup>4</sup> See also, for the same doctrine the cases of: *Holman v. Johnson* (Roman Law principle “*ex dolo malo non oritur action*”), 2 Cowp 341, 98 ENGLISH REPORTS, Full Reprints, 1120, (1775), Opinion by Lord Mansfield; and from the Supreme Court of Puerto Rico: *Rubio Sacarello v. Roig*, 84 DPR 344 (1961), y *Serra v. Salesian Society*, 84 DPR 322 (1961) (the Roman Law principle, similar to the preceding, “*nemo auditor suam turpitudinem allegans*”).

than either waiver or estoppel-the principle that no one shall be permitted to found any claim upon his own inequity or take advantage of his own wrong. *Imperator Realty Co. v. Tull, supra.* A suit may not be built on an omission induced by him who sues. *Swain v. Seamens*, 9 Wall. 254, 76 U.S. 274; *United States v. Peck*, 102 U.S. 64; *Thomson v. Poor*, 147 N.Y. 402, 42 N.E. 13; *New Zealand Shipping Co. v. Société des Ateliers*, [1919] A.C. 1, 6; Williston, Contracts, vol. 2, §§ 689, 692. 291 U.S. 54 (1932), pages 61-62. (Emphasis added)

Defendant respondent established, by plaintiff's own documents, that the Deed of Mortgage in this case was not initially signed by the creditor, nor by the Notary Public (at the time he issued the first certified copy, App.32a) as required by law at the time of the execution of the Deed by Petitioner (and her brother and sister in law)<sup>5</sup>.

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5 When did the representative of the lender signed and initialed the deed of mortgage is a fact not in the record. The Notary Public signs the deeds after all appearing parties have signed. The signatures (and the procedures before the signatures, have to be executed within the same day, 4 LPRA sec. 2046:

“Those persons who sign a public instrument on any account, shall do so by signing at the end and affixing the initials of their name and surname or surnames in the margin of all folios, in the manner they usually do and the notary shall do so after them, flourishing, signing and sealing it.”

“If there are no attesting witnesses, it shall not be necessary for those appearing to sign the document together in the presence of the notary, but he/she may personally receive their signatures at any time within

For the above described reasons, plaintiff Cayman, and successor REO could not base its cause of action in its own inequity, wrong, or violation of statutory law.

It is very important to bring to the attention of this Honorable Court the case of *Puerto Rico v. Russell & Co.*, 228 U.S. 476, which is a case pertaining the laws of Puerto Rico.

In the *Russell* case, *supra*, it is held that *Russell WAS* a Juridical Person In Puerto Rico, different from a common law partnership, due to the fact that it complied with the provisions of the Code of Commerce, and the Civil Code, and It Filed for Recordation. (The “*en comandita*” company, as all other companies, is created by filing the deed of creation for recordation.

Therefore to call the *sociedad en* [\*481] [\*\*449] *comandita* a limited partnership in the common law sense, as the respondents and others have done, is to invoke a false analogy. In the law of its creation the *sociedad* is consistently regarded as a juridical [\*\*\*\*8] person. It may contract, own property and transact business, sue and be sued in its own name and right. [\*\*\*908] Civil Code (1930), §§ 27 to 30; Code of Commerce (1930), §§ 95, 97, 123, 124. Its members are not thought to have a sufficient personal interest in a suit brought against the entity to entitle them to intervene as parties defendant. *See People v. Rivera Zayas*, 29 P. R. 423, 430. It is created by articles of

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the same calendar day of the execution, pursuant to the provisions of § 2042 of this title.”

association filed as public records. Code of Commerce, §§ 95, 98; (Emphasis added)

The pertinent provisions of the Code of Commerce, article 95, 10 LPRA 1341, *supra*, reads as follows:

After a commercial association has been established, it shall have legal representation<sup>6</sup> in all its acts and contracts.

How does a company becomes a juridical person? Article 98 of the Code of Commerce, 10 LPRA 1344:

Every commercial association before beginning business shall be obliged to record its establishment, agreements, and conditions in a public instrument, which shall be presented for record in the mercantile registry, in accordance with the provisions of § 1032 of this title. (Emphasis added)

*See Carden v. Arkoma Assocs., supra.*

#### **A. Notice of Motion Submitting Evidence of Compliance Docket No. 60**

The Motion Submitting Evidence of Compliance with 28 U.S.C. § 2002, was returned to sender, Appendix page 61-66, as to appearing co-defendant Virginia Silva Navarro. The Motion In Compliance as to 72 Order<sup>7</sup> on Motion for Eviction states that compliance

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<sup>6</sup> That sentence is a por translation of the original Spanish text which states: “Una vez constituida la compañía mercantil, tendrá personalidad jurídica en todos sus actos y contratos”. The key words are: “tendrá personalidad jurídica” = “shall have juridical personality”.

<sup>7</sup> Said Order required plaintiff to provide evidence of notice of eviction to co-defendants.

with said Order is shown in Exhibit 1. But No Exhibit 1 Was Attached to Said Motion.

Due Process of the law, at a minimum, is what the law says it is due. *Scott v. McNeal*, 154 U.S. 34, 46 (1894) the Supreme Court of the United States, stated:

[\*46] No judgment of a court is due process of law, if rendered without jurisdiction in the court, or without notice to the party.

The words “due process of law,” when applied to judicial proceedings, as was said by Mr. Justice Field, speaking for this court, “mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, [\*\*\*23] he must be brought within its jurisdiction by service of process within the State, or his voluntary appearance.” *Pennoyer v. Neff*, 95 U.S. 714, 733. (Emphasis added)



## CONCLUSION

It Is Therefore Respectfully Requested That This Honorable Court Grant the Petition for Certiorari and, in Due Course, Reverse the Judgment of the U.S. District Court for the District of Puerto Rico, and Further Grant Relief from the Judgment and Dismiss the Complaint in This Case, and Further reinstate the lien in favor of the United States of America, if the tax debt which it guarantees has not been paid.

Respectfully submitted,

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