

No. \_\_\_\_\_

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IN THE  
Supreme Court of the United States

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PUERTO RICO SUPPLIES GROUP, INC. & AGRO-  
PRODUCE PUERTO RICO INC.,

Petitioner,

v.

BAUTISTA CAYMAN ASSET COMPANY,

Respondent.

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*On Petition for a Writ of Certiorari to the  
Supreme Court of the Commonwealth of Puerto Rico*

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTION PRESENTED FOR REVIEW

Petitioners learned that a Puerto Rico Court of Appeals (“Court of Appeals”) judgment issued in the year 2020 unjustly and erroneously condemning them to pay a multimillion-dollar judgment for allegedly *tortiously interfering* with a loan agreement was based on misrepresentations made at the appellate level by Respondent. In response, Petitioners promptly filed a motion for relief of judgment, pursuant to Puerto Rico Rule of Civil Procedure 49.2 (“Rule 49.2”), before the Puerto Rico Court of First Instance as required.

However, and unexpectedly, the Puerto Rico Court of First Instance (“Court of First Instance”) and the Court of Appeals both ruled that the former lacked jurisdiction to entertain such a motion because it could not revise judgments issued by courts of higher hierarchy. Questions presented:

1. Whether Puerto Rico Courts can foreclose all access to relief from appellate court judgments despite

Rule 49.2's clear language stating that Courts of First Instance may rule on motions requesting relief from appellate court judgments if the former (i) identifies merit in the request and (ii) seeks prior leave of the appellate court to revise the judgment.

2. Whether the Puerto Rico Courts can limit the use of Rule 49.2 revisory discretion solely to flagrant violations rather than to a judgment issued by "mistake" or due to misrepresentation, by simply ruling that the issue could have been previously raised.

**PARTIES TO THE PROCEEDINGS BELOW**

Petitioners Puerto Rico Supplies Group, Inc. and Agro Produce Puerto Rico, Inc. were petitioner-appellants before the Puerto Rico Courts.

Bautisa Cayman Assets Company were respondents and appellees before the Commonwealth of Puerto Rico Courts.

**CORPORATE DISCLOSURE STATEMENT**

Petitioners Puerto Rico Supplies Group, Inc. and Agro Produce Puerto Rico, Inc. have no parent corporation, and no publicly held corporation owns 10% or more of the stock of any of these entities.

## RELATED PROCEEDINGS

The following proceedings are directly related to this petition under this Court’s Rule 14.1(iii):

Court of Appeal’s Opinion deeming Petitioners liable for *tortious interference*: *Bautista Cayman Assets Company v. Central Produce El Jibarito; Inmobiliaria O.M.D., Inc.; Orlando Mayendía Díaz; Puerto Rico Supplies Group, Inc.; Agro Produce, Inc.*, Civil No. KLAN201900424, Court of Appeals, Puerto Rico. Opinion entered on February 11, 2020.

Petitioners’ Motion Requesting Relief from Judgment under Rule 49.2: *Bautista Cayman Assets Company v. Central Produce El Jibarito; Inmobiliaria O.M.D., Inc.; Orlando Mayendía Díaz; Puerto Rico Supplies Group, Inc.; Agro Produce, Inc.*, Civil No. KCD2012-3052, Court of First Instance of San Juan, Puerto Rico. Resolution denying relief entered on September 16, 2022.

*Petition for Certiorari* review of the Court of First Instance’s denial of relief from judgment: *Bautista Cayman Assets Company v. Central Produce El Jibarito; Inmobiliaria*

*O.M.D., Inc.; Orlando Mayendía Díaz; Puerto Rico Supplies Group, Inc.; Agro Produce, Inc.*, Civil No. KLCE202201297, Court of Appeals, Special Panel, Puerto Rico. Resolution denying writ entered on January 27, 2023.

*Petition for Certiorari* review of the Court of Appeals' denial of review of the Court of First Instance's denial of relief from judgment: *Bautista Cayman Assets Company v. Central Produce El Jibarito; Inmobiliaria O.M.D., Inc.; Orlando Mayendía Díaz; Puerto Rico Supplies Group, Inc.; Agro Produce, Inc.*, Civil No. CC-2023-189, Supreme Court, Puerto Rico. Resolution initially denying writ entered on April 21, 2023.

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This Court should grant certiorari because the Commonwealth of Puerto Rico Courts have decided an important state procedural issue in a way that conflicts with *Due Process Rights* and relevant decisions of this Court. Rules of the Supreme Court, Rule 10(c).

- I. Petitioners' state procedural request was violated *via* the Puerto Rico Courts' position that it lacked the jurisdiction necessary to apply it.
- II. The procedural rule violated, which mirrors Federal Rule of Civil Procedure 60(b), includes as a remedy seeking relief when a "mistake" has occurred.

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**PETITION FOR A WRIT OF CERTIORARI  
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Resolution issued by the Court of Appeals denying Petitioners' *Petition for Certiorari* review of the denial of Relief from Judgment under Rule 49.2, entered on January 27, 2023, Civil No. KLCE202201297, is reprinted at App. 21a-55a.

Resolution issued by the Supreme Court denying Petitioners' *Petition for Certiorari* review of the Court of Appeals' denial of review of the Court of First Instance's denial of relief from judgment, entered on April 21, 2023, Civil No. CC-2023-189, is reprinted at 30a-50a.

**JURISDICTION**

The Puerto Rico Supreme Court ("P.R. Supreme Court") initially denied Petitioners Petition for Certiorari review on April 21, 2023, and issued its denial of their final

motion for reconsideration on September 1, 2023, and notified the same on September 6, 2023. (Pet. Ap. 39a-41a) This Court has jurisdiction under 28 U.S.C. § 1258 to review final judgment of the P.R. Supreme Court by writ of certiorari.

### **RELEVANT PROVISIONS**

The Due Process Clause of the Fourteenth Amendment applies to the States, including Puerto Rico, and provides: “Nor shall any State deprive any person of life, liberty, or property, without due process of law.”

The relevant provision of Puerto Rico Rules of Civil Procedure 49.2 and Fed. R. Civ. P. 60(b) are reprinted at 20a-30a.

### **INTRODUCTION**

Petitioners purchased assets available in free commerce from an insolvent produce distributor that had been sued by a bank after defaulting on a \$3,900,000.00 commercial line of credit loan. The assets purchased did not guarantee the loan and the default on the loan agreement

occurred prior to the purchase. The bank subsequently claimed that the Petitioners' purchase of assets free and clear entailed an act of *tortious interference* with the loan agreement. Those claims were summarily dismissed by the Puerto Rico Court of First Instance.

However, a Puerto Rico Court of Appeals, on review *de novo* sought by the bank, revoked the dismissal of the claims raised against the Petitioners and deemed them jointly and severally liable of the payment of that commercial loan for incurring in *tortious interference* with the loan agreement. That decision was completely unexpected, conflicted with a sister court's ruling on similar facts and failed to identify an illicit act committed by the Petitioners. That appellate decision created a new doctrine of joint and several liability as extracontractual banking "guarantors". The Puerto Rico Supreme was unwilling to review that appellate judgment.

In April of the year 2021 Petitioners learned that that appellate court decision condemning them to pay a

multimillion-dollar judgment was based on false relation of facts provided by Respondent to the appellate court. In response, Petitioners filed a timely motion for relief of judgment, pursuant to Puerto Rico Rule of Civil Procedure 49.2 (“Rule 49.2”), before the Puerto Rico Court of First Instance. That rule mirrors the Federal Rule of Civil Procedure 60(b) (“Fed. R. Civ. P. 60(b)”).

The Respondents did not negate having provided a false narrative to the Court of Appeals. Rather they argued that the Court of First Instance lacked jurisdiction to address the issue and anyhow the matter was precluded because it had not been raised during the case in chief.

Both the Court of First Instance and the Court of Appeals agreed and ruled that the Court of First Instance lacked jurisdiction under Rule 49.2 to entertain the matter and/or revoke a court of higher hierarchy’s judgment. In sum, Petitioners were denied access to the only post-judgment relief mechanism available to correct the erroneous decision.

Thus, no recourse existed to correct that injustice despite Rule 49.2's language, even after this Court's decision in *Kemp v. United States*, 142 S. Ct. 1856 (2022).

### **STATEMENT OF THE CASE**

Petitioners were subjected to an unjust judgment issued in the year 2020 by a Court of Appeals, on review *de novo*, deeming them liable for the payment of a third party's commercial loan for allegedly *tortiously interfering* with that loan agreement. That third party has defaulted on a \$3,900,000.00 commercial line of credit loan. That decision was completely unexpected, conflicted with a sister court's ruling on similar facts and failed to identify an illicit act committed by the Petitioners. That appellate decision created a new doctrine of joint and several liability as extracontractual bank guarantors in Puerto Rico. The Puerto Rico Supreme was unwilling to review that appellate judgment.

In April of the year 2021, upon learning that that appellate court decision condemning them to pay that

multimillion-dollar loan and judgment was based on false relation of facts provided by Respondent to the appellate court, Petitioners filed a timely motion for relief of judgment, pursuant to Puerto Rico Rule of Civil Procedure 49.2 (“Rule 49.2”), before the Puerto Rico Court of First Instance. That rule mirrors the Fed. R. of Civ. P. 60(b).

They emphasized relief from judgment under Rule 49.2(c) and (f), and subsequently, after this Court’s decision in *Kemp v. Untied States, supra*, under section (a) also. Further, Petitioners repeatedly argued that failure to grant the remedy as set forth in the rule entails a Due Process violation.

Both the Court of First Instance and the Court of Appeals ruled that the Court of First Instance lacked jurisdiction under Rule 49.2 to entertain the matter and/or revoke a court of higher hierarchy’s judgment. In sum, Petitioners were denied access to the only post-judgment relief mechanism available to correct the erroneous decision.

Rule 49.2’s clear language, just as Fed. R. Civ. P.

60(b), grants litigants a final avenue to seek relief from judgment in cases where an (i) error of fact or law has occurred, and/or (ii) when “misrepresentations...of an adverse party” have caused an error or injustice. *See*, Rule 49.2(a) and (c).

**I. Petitioners’ state procedural request was violated *via* the Puerto Rico Courts’ position that it lacked the jurisdiction necessary to apply it.**

This Court in *Rosewell v. LaSalle National Bank*, 450 U.S. 503, 512, reaffirmed the well-established rule that “the starting point of our inquiry is the plain language of the statute itself.” In this case the Puerto Rico Courts denied Petitioners request for relief from an erroneous and unjust judgment based on “misrepresentations...of an adverse party.” *See*, Rule 49.2(a) and (c).

Unfortunately, the Puerto Rico Courts ruled that the Court of First Instance lacked jurisdiction under Rule 49.2 to entertain the motion for relief of judgment because it could not revoke a court of higher hierarchy’s judgment. Those rulings are erred, since Rule 49.2 contains specific language

that provides guidance as to how a Court of First Instance must proceed when reviewing a higher court's judgment. It states as follows:

Once the appellate court enters judgment, no relief inconsistent with the mandate may be granted under this rule unless previously permitted by the appellate court. In both cases, the motion for relief shall always be made before the respondent court within the term stated above, and if the respondent court determines that it would be willing to grant relief, a request for such leave shall then be made to the appellate court.

*See*, Rule 49.2 at Pet. App. E. In sum, said rule, although mirroring Fed. R. Civ. P. 60(b), provides more guidance and clearer language than its federal counterpart when addressing an appellate court judgment.

Further, the P.R. Supreme Court has recognized that Fed. R. Civ. P. 60(b) is similar to Rule 49.2 and has stated that federal jurisprudence is to be considered when interpreting Rule 49.2. *Piazza Velez v. Isla del Rio, Inc.*, 158 D.P.R. 440 (2003).

That said, while the Puerto Rico Courts are required to consider federal law when ruling on Rule 49.2 motions, in

this case they failed to accept that “a district court may entertain a Rule 60(b) motion without leave of appellate court even when said judgment has been affirmed by said appellate court.” *Standard Oil Co. v. United States*, 429 U.S. 17 (1976). See also, *Ingraham v. United States*, 808 F.2d 1075, 1080-81 (5th Cir. 1987) (“[A] Rule 60(b) motion may be entertained in the district court at any time within a year of judgment, regardless of the pendency or even the completion of an appeal.”); *Ames v. Miller*, 184 F. Supp. 2d 566, 575 (N.D. Tex. 2002) (“The fact that the judgment sought to be set aside had been affirmed on appeal does not impair the trial court’s ability to grant Rule 60(b) relief.”).

In sum, Rule 49.2 itself grants Courts of First Instance jurisdiction to review appellate court’s judgment, as does persuasive federal jurisprudence which they should consider, but here Petitioners were denied access to that last and only post-judgment relief mechanism they had available to correct the erroneous and unjust judgment imposed. Had the Court of First Instance or the Court of Appeals

recognized that authority they may have ruled in Petitioners favor, inasmuch as Respondent did not refute or contradict its incorrect narrative before the Court of Appeals.

**II. The procedural rule violated, which mirrors Federal Rule of Civil Procedure 60(b), includes as a remedy seeking relief from judgment when a “mistake” has occurred.**

In this case besides ruling that they lacked jurisdiction to entertain Petitioners' motion for relief from judgment due to lack of jurisdiction, the Courts of First Instance also stated as follows:

On the other hand, the allegations raised by PR Supplies and Agro Produce that [the appellate court] was induced to error, which according to them places in doubt the Judgment rendered by stated Court, is an argument in law based upon a fact that they may well have raise during the processing of the case before the [appellate court]. They may not now allege through a writ of review of a judgment, what they should have submitted during the processing of the base before the [appellate court] or before the [P.R. Supreme Court].

*See*, Pet. App. at 14a-15a. The Court of Appeals affirmed that ruling. *See*, Pet. at App. 19a-34a.

Petitioners vehemently disagreed with that ruling

and emphasized that post- *Kemp v. United States, supra*, the Courts of Puerto Rico have full authority to revoke their judgments when they can identify a error committed by a court. Their arguments were dismissed. In sum, here a multimillion-dollar judgment was imposed upon Petitioners because the Court of Appeals received a false narrative from Respondent and therefore incorrect appreciations of facts, causing it to deem Petitioners liable for *tortious interference* for the first time on appeal and after Petitioner's had summarily prevailed on the merits in the lower court. That clash between the trial and appellate courts was prompted by a false narrative, which was raised in a motion for relief from judgment.

This Court stated in *Kemp v. United States* that neither the text or history of Rule 60(b)(1) limit its reach to only flagrant cases that would have historically been corrected by courts sitting in equity. *Kemp v. United States, supra*. Further, forcing courts to (i) decide not only whether there was a mistake but (ii) also whether that mistake was

sufficiently “obvious” raises questions of administrability. *Id.*

In sum, the Puerto Rico Courts should have applied the clear letter of Rule 49.2 as suggested in *Kemp* and revised the Court of Appeals 2020 decision imposing liability, rather than ruling that they were precluded from considering the issue based on finality. Rule 49.2 clearly provided an additional remedy to litigants in a case where, as here, a false narrative was improperly used to modify the decision of a lower court. That legally available avenue should not be curtailed by the Puerto Rico Courts’ wishes to maintain finality of judgment. It such was to be the desire or intent behind the procedural rules, Rule 49.2 would have to be amended to include such currently nonexistent limitations.

By failing to adhere to Rule 49.2’s language the Puerto Rico Courts’s decision violated Petitioners’ *Due Process* Rights.

## **REASONS WHY THE PETITION SHOULD BE GRANTED**

Motions for relief of judgment filed pursuant to Rule 49.2 and Fed. R. Civ. P. 60(b) are a litigant’s very last

recourse to correct erroneous and unjust judgments. Such legislation was enacted for a reason and aimed at correcting injustices and human error. They exist for a reason and Puerto Rico Courts should not curtail or foreclose such legislated rights based on arguments of finality and practicality, when the record shows that a false narrative was put in place at the appellate level to wheel that court to issue an incorrect decision. At the very least, such a record should require a carefully review of the allegations of error (judicial and factual) and misrepresentations made to the courts that affected the relevant judgments. To fail to do so undermines the credibility of the judicial systems mantra of imparting justice and violated basic Due Process rights.

In this case, even where Respondent did not deny the misrepresentations they provided to the Court of Appeals, the Puerto Rico Courts failed to recognize their broad authority to review and correct the mistake and injustice. This Court's ruling on such matter and based on *Kemp* would serve as needed guidance to all courts, including the

Puerto Rico Courts.

## CONCLUSION

The issues raised in this Petition for Certiorari review were matters of first impression before the Courts of Puerto Rico. Review is essential in order to address matters of administrability of justice since litigants in Puerto Rico should not be divested from their right to seek relief from an erroneous and unjust judgment issued by an appellate court when Rule 49.2 grants them such a remedy, simply because of the courts' desire to assure the finality of their judgments. To deny them that right entails a Due Process violation.

Respectfully submitted,

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