

No. _____

IN THE
Supreme Court of the United States

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

Petitioner,

v.

BAUTISTA CAYMAN ASSET COMPANY,

Respondent.

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

**APPENDIX TO PETITION FOR A WRIT OF
CERTIORARI**

Heriberto López Guzmán
H. López Law LLC
Metro Office Park
Building 11, Suite 105A
Guaynabo, P.R. 00968
(787) 948-0067
hlopez@lopezlaw.com

** Counsel of Record*

Counsel for Petitioners

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Appendix A

OAT1835-Single Notification Form – Appeals Court (March 2017)

From: NoReply@poderjudicial.pr
Sent: Friday, October 28, 2022, 2:19 PM
To: Thomas Trebilcock
Subject: Digital Notice K CD2012-3052

**COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
TRIAL COURT
SAN JUAN SUPERIOR COURTROOM**

BAUTISTA CAYMAN ASSETS COMPANY
PLAINTIFF
VS
CENTRAL PRODUCE EL JIBARITO, INC
DEFENDANT

CIVIL NO. K CD2012-3052
COURTROOM: 0508
SUBJECT: MORTGAGE FORECLOSURE

NOTIFICATION

A: TREBILCOCK-HORAN, THOMAS, ESQ.
TT@TREBILCOCKLLC.COM

AGUILA-MELENDEZ, GUELMARIE, ESQ.
GAGUILA@SPLAWPR.COM

APONTE-MELLADO, RUBEN, ESQ.
RUBEN.APONTE@JSYALAW.COM

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MELENDEZ-FRED, ROMEL EDEL, ESQ.
RMELENDEZ@GMAIL.COM

RAMOS-APONTE, RAMON L., ESQ.
RAMON.RAMOS@JSYALAW.COM

SALICHS, JUAN C., ESQ.
JSALICHS@SPLAWPR.COM

THE UNDERSIGNING CLERK CERTIFIES AND NOTIFIES YOU THAT THIS COURT, WITH REGARDS TO THE CAPTIONED CASE, HAS ISSUED AN ORDER DATED OCTOBER 28th OF 2022.

THE RULING IS TRANSCRIBED AS FOLLOWS:

MOTION FOR RECONSIDERATION.

ORDER: WRITS BY THE PARTIES HAVING THUS BEEN EVALUATED, STATED RECONSIDERATION IS *DENIED*.

OBJECTION TO ORDER FOR RECONSIDERATION.

ORDER: SEE ADDITIONAL ORDER DATED TODAY.

[SGD]

YANAY Y. PAGAN-RAMOS
JUDGE

YOU ARE ADVISED THAT UPON YOU BEING A PARTY OR LEGAL REPRESENTATIVE IN THE CASE SUBJECT OF THIS ORDER, YOU MAY FILE FOR A WRIT OF APPEAL, REVIEW OR *CERTIORARI* IN ACCORDANCE WITH THE PROCEDURES AND TERMS ESTABLISHED BY LAW, REGULATIONS OR RULES.

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I CERTIFY THAT THE RULING ISSUED BY THE COURT WAS DULY REGISTERED AND FILED THIS 28th DAY OF OCTOBER, 2022, AND THAT COPY OF THIS NOTICE WAS SENT TO THE ABOVE STATED PERSONS TO THEIR ADDRESSES AS REGISTERED ON RECORD, IN ACCORDANCE WITH APPLICABLE RULES. A COPY OF THIS SAME NOTICE WAS FILED IN DOCKET OF THIS SAME CASE.

IN SAN JUAN, PUERTO RICO, THIS 28th OF OCTOBER, 2022.

GRISELDA RODRIGUEZ-COLLADO
FOR: SGD. MARTHA I ALMODOVAR-CABRERA
NAME OF THE REGIONAL CLERK

NAME & SIGNATURE OF THE COURT DEPUTY CLERK

**OAT1812-Single Notification Form – Judgments, Rulings,
Orders & Minutes (November 2016)**

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COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
TRIAL COURT
SAN JUAN SUPERIOR COURTROOM

BAUTISTA CAYMAN ASSETS COMPANY
PLAINTIFF
VS
CENTRAL PRODUCE EL JIBARITO, INC
DEFENDANT

CIVIL NO. K CD2012-3052
COURTROOM: 0508
SUBJECT: MORTGAGE FORECLOSURE

R U L I N G

Pending consideration by this Court is the “Motion for Relief from Judgment under Rule 49.2”, and the “Answer Opposing the Motion for Relief from Judgment”, filed by co-defendants Puerto Rico Supplies Group, Inc. (“PR Supplies”) and Agro Produce Puerto Rico, Inc. (“Agro Produce”)’ as well as the “Opposition to Motion for Relief from Judgment”, “Motion Reaffirming Motion for Order to Execute Judgment, and Motion Opposing the Motion to Relief from Judgment under Rule 49.2”, and “Second Motion Reaffirming Motion for Order to Execute Judgment and Motion Opposing Motion for Relief from Judgment” filed by Plaintiff Bautista Cayman Assets Company (“Bautista”), all

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through their respective legal representatives, this Court thus rules as follows:

A.

On March 15th of 2019, this Court issued a Summary Judgment (“Judgment”) in which it Granted the complaint, insofar as co-defendants Central Produce El Jibarito, Inc. (“Central Produce”), Inmobiliaria OMD, Inc. (“OMD”), and Mr. Orlandi Mayendia-Diaz (“Mr. Mayendia”), and co-jointly ordered them to pay the sum of \$3,665,865.76 for principal; \$971,123.48 in interest; \$45,541.47 for charges in arrears; and \$366,586.57 as penalty, for a total of \$5,049,117.28, plus the amount that accumulates, in accordance with the loan contract, the re-structuring agreement, and the continuous and and unlimited warranties as undersigned. However, insofar as as co-defendants Puerto Rico Supplies and Agro-Produce, the cause of action for tortfeasible interference and for third party tort contract was dismissed, and it was ruled that the Bulk Sale Act was not applicable (“the Dismissal”).

Bautista, not satisfied with Dismissal of the Judgment, filed an appeal to the Appeals Court (“AC”), in case KLAN201900424 requesting review and partial repeal of the Judgment as to Dismissal.

On February 11th of 2020, the AC rendered a Judgment in case number KLAN201900424, revoking the

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Judgment issued by this Court, insofar as the Dismissal, and ruling that PR Supplies and Agro Produce are co-jointly liable together with the rest of of the co-defendants, for payment of the debt claimed by Batista (“AC Judgment”).

On February 27th of 2020, PR Supplies and Agro Produce requested reconsideration to the AC, which was Denied through Ruling dated June 29th of 2020, notified and filed into case file on July 28th of 2020.

On August 26th of 2020, PR Supplies and Agro Produce filed a Writ of Certiorari before the Puerto Rico Supreme Court (“PRSC”), as to request a partial repeal of the the AC's Judgment. The PRSC denied issuance of the requested remedy on October 9th of 2020. On December 11th of 2020, Puerto Rico Supplies and Agro Produce, respectively, filed motions for reconsideration which were denied through a Ruling by the PRSC. On February 26th of 2021, the PRSC notified its Order to theAC. On February 25th of 2021, the PRSC notified its order to this Court. Wherefore, the Judgment by this Court modified by the AC Judgment turned final an unappealable (“Reviewed Judgment”).

On March 31st of 2021, Bautista filed a Motion to Enforce Judgment for purposes of executing the Reviewed Judgment through the attachment of assets belonging to

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defendant parties.

On April 15th of 2021, PR Supplies and Agro Produce filed a Motion of Relief of Judgment under Rule 49.2 (“Motion for Relief”), through which that they request they be relieved from the TC's judgment since they deemed that the AC was induced into error which, according to them places into doubt the validity of the Judgment rendered therein.

Through Order dated April 22nd of 2021, and notified on April 23rd of 2021, we granted Batista a period of twenty (20) days to propound their position insofar as the Motion for Relief.

On April 27th of 2021, Batista filed an “Opposition to Motion for Relief of Judgment” in which it argued that the motion for Relief, aside from being frivolous, was improper under law and filed to delay the advance of the executory phase of the Revised Judgment. Moreover it indicated that the workings of Rule 49.2 of Civil Procedure, 32 LPRA App.V, R. 49.2 (2009) is not disposable for requesting relief from judgments rendered by the AC, since same solely applies to rulings by the Trial Court, referring to the case of De Jesus Vinas v. Gonzalez Lugo, 170 DPR 499, 512 (2007), and requested that the Motion for Relief be Denied.

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On April 5th of 2021, Puerto Rico Supplies and Agro Produce filed a “Response Opposing a Motion to Relief from Judgment”, in sum requesting: a) that they be released from the effect of the Judgment by the AC; b) that a Hearing be scheduled to address merits of the Motion for Relief and/or

- c) us indicate whether we are inclined to grant relief via a “brief memorandum so indicating” to allow them to proceed to request permission from the AC, as is required.

On January 22nd of 2022, Bautista presented a “Motion Reaffirming Motion for Order to Execute Judgment and Motion Opposing Motion to Relief of Judgment under Rule 49.2” reaffirming themselves in their Motion to Execute Judgment and Opposition to the Motion for Relief and requesting that the Motion to Execute be Granted, the Motion for Relief be Denied, and the Opposition to the Motion for Relief be Granted therein.

B.

Rule 49.2 of Civil Procedure, 32 LPRA App. V.R. 49.2, allows a Court to relieve a party of a judgment, order or proceeding under several grounds: (a) error, inadvertence, surprise or excusable negligence; b) discovery of essential evidence which, in spite of any due diligence, could not have been discovered in time as to request a new trial, in

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accordance with Rule 48; c) fraud, false representation or other improper conduct from an adversarial party; d) nullity of a judgment; e) the judgment has been applied or waived; and f) any other reason which justifies the granting of a remedy against the effects of a judgment.

Now, Rule 49.2 of Civil Procedure,³² LPRA App. V, R. 49.2 establishes a procedural means available to request from the instant forum relief from the effects of a judgment. De Jesus Vinas v. Gonzalez Lugo, 170 DPR 499 (2007). The Puerto Rico Supreme Court has stated that at the time of evaluating the source of a request for relief from judgment, it must also evaluate whether the petitioner has a good defense on its merits; the intervening time period between the judgment and the request for relief; and the degree of prejudice which granting stated relief from judgment might prompt upon the opposing party. Reyes v. ELA et al., 155 DPR 799, 810 (2001).

In spite of Rule 49.2 for Civil Procedure, *supra*, being liberally interpreted, the Supreme Court has admonished that same does not constitute a “master key” for reopening controversies, and must not be used in substitution for a writ of review or a motion for reconsideration. *Vazquez v. Lopez*, 160 DPR 714, 726 (2003). The decision to grant relief from a judgment is limited to the Trial Court's discretion. Garriga

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Gordils v. Maldonado-Colon, 109 DPR 817, 822; Fine Art Wallpaper v. Wolff, 102 DPR 451, 458 (1974).

On the other hand, the Puerto Rico Supreme Court has pointed out that the motion for relief of judgment is not offered to correct errors in law, nor mistakes in weighing or evaluating evidence. These are grounds for a reconsideration or appeal of the ruling, but not for a waiver. See Garcia Colon et al v. Sucn. Gonzalez, 178 DPR 527, 542-543 (2010).

In accordance with the above, the Puerto Rico Supreme Court has ruled that the six (6) month period for filing a motion for relief from a judgment is final. *Id.*, at page 543. Consequently, Rule 49.2, *supra*, is categorical insofar that the motion for relief must be filed within a reasonable time period but that “in no case exceeds six months [...]” *Id.* Due to the conclusionary feature of the jurisdictional time period, a court thus lacks jurisdiction to consider any writ of review, if the moving party fails to comply in submitting and notifying same to the parties within the time-frame. See De Jesus Vinas v. Gonzalez-Lugo, *supra*, page 507-508.

It becomes convenient, in what is pertinent herein, to highlight that “the six month period at hand does not expand because a review or appeal proceeding has been initiated”.

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Piazza v. Isla del Rio, Inc., 158 DPR 440, 453 (2003). To the contrary, “...the motion for relief must always be submitted to the appellee court within the above indicated time period and, if same were to decide that it would be willing to grant such remedy, then the appeals court would be availed to request the aforestated permission, 32 LPRA App. V, R. 49.2.” Olmo Roche v. Sucesion de Jose Antonio Pabon-Rodriguez, 2019 WL 2144529 (2019).

So then, a motion for relief under governance of this rule does not substitute in as a motion for reconsideration or a writ for review. Vazquez v. Lopez, 160 DPR 714, 726 (2003). A motion for relief may not be used to challenge substantive issues which should have been raised prior to a judgment as affirmative defenses, or after a judgment as a writ for review” Rivera v. Algarin, 159 DPR 482, 490 (2003).

The Supreme Court has emphasized that the rules for Civil Procedure are not applied for to the appellate forums in a non-deliberative and automatic manner. See Melendez Gonzalez v. M. Cuebas, 193 DPR 100, 128 (2015). Trial and appellate courts are different. In De Jesus Vinas v. Gonzalez-Lugo, *supra*, at page 512 (2007), the PRSC reasoned that:

The nature and purpose of both courts are different. Whileas the Trial Court provides for presentation of evidence

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and an encounter between the parties thereby involved, in the intermediate (level) Appellate Court stated function is limited to reviewing the proceedings carried out before the trial court.

Precisely upon this it is inherent that both courts cannot be automatically controlled by the same rules. Automatic applicability of the Rules for Civil Procedure to the Appeals Court would definitely misrepresent the nature of the appeals process, which must be characterized by the swift and effective appellate justice. (Our Italics).

In summary, “[a] Request for Relief from Judgment under the terms of Rule 49.2 is solely proper against judgments issued by the Trial Court, and not for Judgments rendered by the Court of Appeals”. J. Echevarria-Vargas, Puerto Rican Civil Procedures, 1st Ed., rev., Colombia, 2012, page 297.

Consequently, the petition for relief of judgment must always be submitted before the court appealed to within the above stated time frame and, if same rules that it would be willing to grant such remedy, then the appeals court would be availed as to request the indicated permission. Olmo Roche v. Sucesion de Jose Antonio Pabon-Rodriguez, KLCE201801636, Judgment dated January 31st of 2019, 2019 WL 2144529 (CAC) *2. Once the six month period for

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registering of any judgment has elapsed, then no motion for relief may be entertained. Piazza v. Isla del Rio, Inc., supra, page 452.

Therefore, the Trial Court does not have authority to grant relief to any of the parties from the effects of a judgment issued by the appellate forum.

The above analysis must be accompanied with the backdrop of the mandate within appellate litigation. As the Supreme Court has so manifested, the mandate has been defined as the means which an appellate court retains to indicate to a lesser court, the decision which same has taken regarding the judgment object of the review, and to order same to act in accordance with what was ruled therein. Mejias Montalvo, et al v. Rafael Carraquillo-Martinez, et al, 185 DPR 288, 301 (2012).

The main purpose of the mandate is to attain that the lower court act in a manner consistent with the rulings [of the appellate court]”. *Id.* Once the Court Clerk forwards the order, the case which had been under consideration by stated forum is for all purposes concluded and, consequently, the lower court gains the faculty to continue with the proceedings, according with what the appellate court may have ruled. *Id.* (which quotes with approval of Perez, Ex Parte v. Depto. De Familia, 147 DPR 556, 571 (1999)). What

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the appellate forum provides for binds the appealed court therein, and the latter is barred from re-examining already ruled upon matters. *Felix Taveras v. Las Haciendas*, 165 DPR 832 (2005).

In the instant case, PR Supplies and Agro Produce request a waiver from the Judgment rendered by the AC. As we have stated, a Request for Relief of Judgment under the terms of Rule 49.2 is only proper against judgments issued by the Appeals Court”. See J. Echevarria Vargas, Procedimiento Civil Puertorriqueño, *supra*.

It arises that the request for relief from judgment filed by PR Supplies and Agro Produce, from its face, is meritless, insofar that it is filed at this Court which lacks jurisdiction to grant such a remedy, and neither do their allegations support any of the exceptions as to so grant such relief in a separate litigation.

On the other hand, the allegation raised by PR Supplies and Agro Produce that the AC was induced to err, which according to them places into doubt the Judgment rendered by stated Court, is an argument in law based upon a fact that they may well have raised during the processing of the case before the AC. They may not now allege through a writ for review of a judgment, what they should have submitted during the processing of the case before the AC or

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before the PRSC.

The Mandate is thus received by the AC to therefore continue with the proceedings in accordance with its ruling. This Court lacks the authority to relieve PR Supplies and Agro Produce from the effects of a Judgment from the AC. We agree with Bautista in that the sole remedies available for a party affected by a Judgment from the AC are a Reconsideration by that same forum, and to petition a Writ of Certiorari before the PRSC. See *De Jesus Vinas v. Gonzalez-Lugo*, *supra*, at page 515. In the instant case, PR Supplies and Agro Produce have already depleted stated remedies.

In accordance with the above, we Deny the “Motion for Relief from Judgment under Rule 49.2” as submitted by PR Supplies and Agro Produce.

NOTIFY FORTHWITH.

Issued in San Juan, Puerto Rico this 16th of September, 2022.

[Signed]
YANAY PAGAN-RAMOS
SUPERIOR COURT JUDGE

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From: NoReply@poderjudicial.pr
Sent: Friday, January 27, 2023, 2:10 PM
To: Thomas Trebilcock
Subject: Digital Notice KLCE202201297

**COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
TRIAL COURT
SAN JUAN SUPERIOR COURTROOM**

BAUTISTA CAYMAN ASSETS COMPANY
PLAINTIFF
VS
CENTRAL PRODUCE EL JIBARITO, INC
DEFENDANT

CIVIL NO. K CD2012-3052
COURTROOM: 0508
SUBJECT: MORTGAGE FORECLOSURE

NOTIFICATION

A: TREBILCOCK-HORAN, THOMAS, ESQ.
TT@TREBILCOCKLLC.COM

CENTRAL PRODUCE EL JIBARITO, INC.
PO BOX 11909
SAN JUAN, PR 00922

INMOBILIARIA OMD INC
PO BOX 11909
SAN JUAN, PR 00922

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AGUILA-MELENDZ, GUELMARIE, ESQ.
GAGUILA@SPLAWPR.COM

APONTE-MELLADO, RUBEN, ESQ.
RUBEN.APONTE@JSYALAW.COM

COLON RODRIGUEZ, ESQ., JOSE E
PEPECOLON1953@GMAIL.COM

RAMOS-APONTE, RAMON L., ESQ.
RAMON.RAMOS@JSYALAW.COM

SALICHS, JUAN C., ESQ.
JSALICHS@SPLAWPR.COM

MAYENDIA DIAZ, ORLANDO
PO BOX 11909
SAN JUAN, PR 00922

TRIAL COURT SAN JUAN
NOTIFICACIONESSANJUAN@PODERJUDICIAL.PR

[Press here to access the digital document subject of this Notice. The document shall be available through this link during 45 days from when the notice on record was filed.](#)

YOU ARE ADVISED THAT UPON YOU BEING A PARTY OR LEGAL REPRESENTATIVE IN THE CASE SUBJECT OF THE FINAL RULING, I AM ADDRESSING THIS NOTICE TO YOU, AND YOU MAY FILE FOR A WRIT OF APPEAL OR *CERTIORARI* IN ACCORDANCE WITH THE PROCEDURES AND TERMS ESTABLISHED BY LAW, REGULATIONS OR RULES.

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I MOREOVER CERTIFY THAT ON THIS DATE I FORWARDED COPY OF THIS NOTICE TO THE ABOVE STATED PERSONS TO THEIR ADDRESSES AS REGISTERED ON RECORD, IN ACCORDANCE WITH APPLICABLE RULES. ON THIS SAME DATE A COPY OF THIS NOTICE WAS FILED IN DOCKET OF THE SAME CASE.

IN SAN JUAN, PUERTO RICO, ON JANUARY 27th, 2023.

LILLIAM M. OQUENDO-SOLIS

FOR: SGD./ YAIRA COLON-RAMOS

NAME OF THE CLERK FOR THE COURT OF APPEALS

NAME & SIGNATURE OF THE DEPUTY

DEPUTY COURT CLERK

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Commonwealth of Puerto Rico
APPEALS COURT
SPECIAL PANEL

BAUTISTA CAYMAN ASSETS COMPANY

Appellee

v.

CENTRAL PRODUCE EL JIBARITO, INC.;
INMOBILIARIA O.M.D. INC.; ORLANDO MAYENDIA
DIAZ;
PUERTO RICO SUPPLIES GROUP, INC.;
AGRO PRODUCE PUERTO RICO, INC.

Certiorari
Proceeding from the Trial Court
San Juan Part
Case No.: KCD2012-3052

Subject:
Money Collection;
Enforcement of Waranties;
Breach of the Bulk Sales Act;
Fraudulent Sales to Creditors.

KLCE202201297

Special Panel conformed by its President, Judge Ronda del Toro, Judge Diaz Rivera and Judge Monge Gomez 1.

Monge-Gomez, Judge Rapporteur.

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R U L I N G

In San Juan, Puerto Rico, on January 27th, 2023.

COME NOW Puerto Rico supplies, Inc. (hereafter “PRSG” and Agro Produce Puerto Rico. Inc. (hereafter “AP”), and through a Writ of *Certiorari* request that we revoke a *Ruling* issued on September 16th of 2022 by the Trial Court, San Juan Part (hereafter the “TC”). Through stated ruling the instant forum **DENIED** a “Motion for Relief from Judgment” filed by both petitioners, and in which they requested they be relieved from a Judgment rendered by the Collegiate Panel in case number KLAN201900424.

Considering the factors under Rule 40, 4 LPRA App. XXII-B, R. 40 of this Court's Regulations, the requested remedy is **DENIED**.

1 Through Administrative Order OATA 2023-001. the Hon. Jose Johel Monge-Gomez substituted in for the Hon. Felipe Rivera-Colon as to engage in the merits of the instant plea.

The instant case goes back to October 24th of 2007 when Doral Bank (hereafter “Doral”) and Central Produce El

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Jibarito, Inc. (hereafter “Central Produce”) undersigned a Loan Contract as to grant a \$3,900,000line of credit. On December 26 of 2012, in view of a lack of compliance with the terms of the loan, Doral filed a complaint for collection of funds and enforcement of warranties against Central Produce, Inmobiliaria O.M.D., Inc. (hereinafter “OMD”) and Mr. Orlando Mayendia Diaz (hereinafter “Mister Mayendia”).

Several procedural incidents having been overcome, then on April 20th of 2015, Bautista Cayman Assets Company (hereinafter, “Bautista” or “respondent”) filed a motion to substitute in for Doral, in which was indicated that it had acquired from the Federal Deposit Insurance Corporation, facilitation of credit with regards to the instant case. Bautista immediately filed a motion for summary judgment against Central Produce, OMD, Mr. Mayendia, PRSG and AP. Petitioners opposed stated motion, and furthermore requested that a summary judgment be issued

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in their favor, to which respondent opposed.

Things being such, on March 15th of 2019, the TC rendered a summary judgment and GRANTED the complaint for collection of funds and enforcement of warranties, solely as to OMD, Central Produce and Mr. Mayendia, which were jointly sentenced to pay \$5,049,117.28. On the other hand, cause of action for tortfeasible interference and third-party damage contract against PRSG and AP, were dismissed.

Dissatisfied with stated ruling, Bautista then filed a writ of appeal to this Honorable Court under case number KLAN201900424 as to request review and partial revoking of the Judgment, with regards to the dismissal against the petitioners. Through Judgment entered on February 11th of 2020, a Similar Panel revoked the ruling by the TC insofar as the dismissal, and determined that PRSG and AP are jointly responsible for the loan credit line which Bautista acquired from Doral.

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On February 27th of 2020, PRSG and AP requested reconsideration before this same forum, which was denied through Ruling dated June 29th of 2020.

Not satisfied, on August 26th of 2020, petitioners appealed unsuccessfully to the Puerto Rico Supreme Court (hereinafter, “Supreme”), requesting that it revoke the Judgment issued by this reviewing forum. The Supreme Court likewise denied two motions for reconsideration submitted by PRSG and AP on December 11th of 2020 and February 12th of 2021, respectively. Once stated reconsiderations were denied, and the order from the Supreme (Court) notified, then the Judgment rendered by this appellate forum became final and unappealable.

Things being such, the appellee then filed a **“Motion to Order Enforcement of Judgment”** on March 31st of 2021. PRSG and AP, on their part, filed a **“Motion for Relief of Judgment under Rule 49.2”** on April 15th of 2021, through which they requested to be relieved from the Judgment

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issued by the Collegiate Panel on February 11th of 2020. Note that stated motion for relief was filed one (1) year and two (2) months after issuance of the ruling which AP and PRSG purported to wish relief from.

In stated writ, petitioners alleged that this Illustrious Forum was induced into error due to alleged improper conduct and/or dishonest proffer by Bautista. On April 27th of 2021 respondent filed their **“Opposition to Motion for Relief”**, and requested that same be *Denied*, since the sole remedies available for a party affected by our ruling were a reconsideration before this Illustrious Forum, and a petition for Writ of Certiorari before the Supreme Court, and which had been exhausted by the petitioners.

On May 4th of 2021, PRSG and AP filed their **“Response to Motion in Opposition to Relief from Judgment”** reaffirming that they should be relieved from the Judgment rendered on February 11th of 2020, and requesting that a hearing be held as to address the merits of a Motion for

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Relief from Judgment. Bautista, on January 24th of 2022, submitted **“Motion Reaffirming the Motion of Order for Enforcement of Judgment”** and the **“Motion Opposing the Motion for Relief of Judgment under Rule 49.2”**.

The primary forum issued, on September 16th of 2022 and notified on October 5th of 2022, a ruling which *denied* the motion for relief filed by PRSG and AP. The Trial Court determined that the appeal raised by the petitioners was not the adequate one to elucidate the grounds which they could have and should have invoked during the proceedings of the case before the Collegiate Panel, or before the Supreme Court. On October 20th of 2022, PRSG and AP requested reconsideration with respect to the appealed ruling. On October 26th of 2022, Bautista filed its opposition to the reconsideration. The Trial Court *Denied* the **“Motion for Reconsideration”** through an *Order* issued on October 28th of 2022.

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Still dissatisfied, PRSG and AP, on November 28th of 2022, again appeared before this Forum through the captioned writ and requested that the appealed *Ruling* be revoked. In presentation of their writ, petitioners pointed out the following indications of error:

First: The Trial Court erred upon determining that it lacked jurisdiction to address the “Motion for Relief from Judgment under Rule 49.2” filed by the appearing parties under the reasoning that it lacked the authority to release them from a Judgment rendered by the Court of Appeals.

Second: That the Trial Court erred upon determining that the Petitioners could not allege, through their Motion for Relief from Judgment, that the Appeals Court committed an “error” by creating a “new” torts system for joint banking guarantee within the country, as a result of the “false representations” and “improper conduct” by Bautista, since they should have presented this argument during the proceedings before the Appeals Court or the Supreme Court.

Bautista, on February 27th of 2022, filed an Opposition to *Certiorari*, reaffirming that the motion for relief from judgment, in addition to being tardy, was not the appropriate remedy for correcting errors in law, nor errors for weighing and appraising the evidence.

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II.

The writ of Certiorari is an exceptional remedy through which a court of higher standing may, at its own discretion, review a decision by a lower court. Pueblo v. Diaz De Leon, 176 DPR 913, 917 (2009). Since same is an extraordinary appeal of a discretionary type, same shall only be issued after properly weighing in that criteria established under Rule 40 of our Regulations, 4 LPRA App. XXII-B, R. 40, and in those specific instances which are limited by Rule 52.1 of Civil Procedure, 32 LPRA App. V, R. 52.1. To said effects, Rule 52.1 for Civil Procedure, 32 LPRA App. V, limits the authority of this Court of Appeals to review interlocutory orders and rulings issued by the trial courts by means of the discretionary Certiorari appeal. In what results pertinent therein, the above quoted regulatory clause, *supra*, provides that:

The writ of certiorari insofar as the review of interlocutory orders and rulings rendered by the Trial Court, can solely be issued by the Appeals Court whenever

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appealing any rule or order under Rules 56 or 57, or from denial of any motion of a dispositive type. Notwithstanding, and as an exception to that stated above, the Appeals Court may review interlocutory orders and rulings issued by a Trial Court when appealing decisions regarding admissability of factual witnesses or essential experts, matters relating to evidentiary privileges, notices of contempt, in family relations issues, in cases involving the public interest or any other situation in which waiting for an appeal would constitute an irremediable failure of justice, upon denying the issuance of a writ of certiorari in such cases, then the Appeals Court does not have to justify its ruling.

For purposes of us being able to exercise our discretional faculties of understanding or not, in a sensible manner, the merits that are propounded through the writ, Rule 40 of our regulations, 4 LPRA App. XXII-B, points out what criteria that we need to consider upon addressing a request for issuance of a writ of *certiorari*. The above quoted regulatory provision provides for the following:

The court shall take the following criteria into consideration upon determining issuance of a writ of certiorari or for an order to show cause:

A. If the remedy and disposal of the appealed ruling differing from its grounds, are contrary to law.

B. If the factual situation as propounded is the one most indicated as to analyze the problem.

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C. If prejudice, partiality or crass and manifest error incides from the Trial Court when it weighs the evidence.

D. If the matter at hand demands a more thorough consideration in view of the original arguments which need to be raised or have more elaborate allegations.

E. Whether the stage of the proceedings in which the case is at is the most appropriate one for it to be considered.

F. Whether issuance of the writ or the order to show cause does not prompt any undue fractioning of litigation and an undesired delay in a final solution for the litigation.

G. Whether issuance of the writ or order to show cause avoids a miscarriage of justice.

The limitations imposed by these regulatory provisions have the intrinsic purpose of anticipating a “delay which would prompt judicial review of controversies which can await to be propounded through the writ of appeal”. Scotiabank v. ZAF Corp. et al., 202 DPR 478 (2019), Mun. Aut. De Caguas v. JRO Construction, Inc. et al., 201 DPR 703, 712 (2019). Notice that, distinct from the writ of appeal,

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the writ of *certiorari*, since same is a discretionary appeal, same needs to be used cautiously and for the proper reason. Pueblo v. Diaz de Leon, *supra*, page 918.

In stated sense, the Puerto Rico Supreme Court has repeatedly indicated that *discretion means* to be empowered to rule in one way or another; to wit, to choose between one or several courses of action. Pueblo v. Rivera-Santiago, 176 DPR 559, 580 (2009); Garcia v. Padro, 165 DPR 324, 334 (2005). The adequate exercise of judicial discretion is “inexorably and unfailingly tied to the concept of reasonableness”. Pueblo v. Ortega-Santiago, 125 DPR 203, 211 (1990). So then, an appellate court shall not intervene with the discretionary decisions of a sentencing court, unless that the rulings issued by the latter are arbitrary or it has abused its discretion. Pueblo v. Rivera-Santiago, *supra*, page 581; S.L.G. Flores, Jimenez v. Colberg, 173 DPR 843 (2008).

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III.

In its first indication of error, petitioners allege that the TC erred by declaring itself of lacking jurisdiction to address the “Motion for Relief from Judgment” submitted on April 15th of 2021, due to lack of authority to release stated party from a Judgment issued by the appellate forum. Moreover, petitioners also impute upon the initial forum that same erred in its ruling that the arguments raised by them were grounds for reconsideration or appeal of the ruling, and not for relief. Since these are intimately related to one another, we will rule as to both issues jointly. The instant controversy therefore being analyzed under the above indicated doctrinal framework, we consider there exists nothing within the propoundments by petitioners that moves us to intervene in the ruling appealed herein.

The Supreme Court has pointed out that the motion for relief from judgment is not tenable for correcting errors in law nor errors for weighing and appraising the evidence.

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Such are grounds for reconsideration or appeal of the ruling, but not so for relief. Garcia-Colon et al v. Sucn. Gonzalez, 178 DPR 527, 543 (2010). In the instant case, there exists no doubt that petitioners depleted stated remedies without invoking the errors which gave raise to their motion for relief from judgment, in a timely manner. It surfaces from the (case) file that the petitioners had numerous opportunities to carry out and sustain their allegations, insofar as the presumptive improper conduct or “dishonest narrative”. It is timely to recall that, in spite that Rule 49.2 of Civil Procedure, 32 LPRA App. V, R. 49.2 needs to be interpreted liberally, our most highest forum had admonished that same does not constitute a “master key” for reopening controversies and neither may same be used in substitution for a writ of review or motion for reconsideration. Vazquez v. Lopez, 160 DPR 714, 726 (2003).

After a paused reading and analysis of the instant writ, as well as of the document which forms its appendix

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plus the arguments raised by the parties, we rule that at present there does not exist any of the criteria established under Rule 40 of our regulations for the issuance of a writ of *certiorari*. Neither did we notice that the initial forum has acted with prejudice or partiality, nor that it incurred into blatant abuse of discretion, or that it erred in interpreting or applying any procedural rule or ones of substantive law. We conclude that the decision by the TC was reasonable, in accordance with legal rules and applicable law.

Since the writ of *certiorari* is one which rests upon the sane discretion of this Court for its issuance therein, we deem that in this case, its issuance is not justified; wherefore it is proper to *deny* issuance of the requested writ.

IV.

Due to the aforestated grounds, issuance of the *writ of certiorari* is **denied**.

So agreed to and ordered by the Court, and so certified by the Court of Appeals Clerk.

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[Sgd.]

Lilia M. Oquendo-Solis, Esq.
Clerk for the Court of Appeals

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Appendix C

From: NoReply@poderjudicial.pr
Sent: Thursday, September 7, 2023 10:17 AM
To: Thomas Trebilcock
Subject: Electronic Notification CC-2023-0189

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
SUPREME COURT

BAUTISTA CAYMAN ASSESTS COMPANY
RESPONDENT
VS.
CENTRAL PRODUCE EL JIBARITO, INC. and
OTHERS
PETITIONERS

CASE NUMBER: CC-2023-0189
ORIGINAL: K CD2012-3052
APPEALS: KLCE202201297
MONEY COLLECTION
CIVIL ACTION OR FELONY

MR. TREBILCOCK HORAN, THOMAS
TT@TREBILCOCKLLC.COM

LETTER OF PROCEDURE ON MANDATE

I REFER YOU TO THE MANDATE OF THIS COURT IN
RELATION TO THE PETITION FOR CERTIORARI

Click [here](#) to access the electronic document that is the subject of this notification. The document will be available at through this link for 45 days from the date on which the notification was filed in the file.

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NOTE TO ATTORNEYS AND PARTIES *****

MANDATE SENT TO THE CHAMBER OF THE
CORRESPONDING COURT.
THIS LETTER IS FOR YOUR INFORMATION ONLY.

OMD REAL ESTATE
PO BOX 11909
SAN JUAN PR 00922

LIC. AGUILA MELÉNDEZ, GUELMARIE
GAGUILA@SPLAWPR.COM

LIC. APONTE MELLADO, RUBÉN
RUBEN.APONTE@JSYALAW.COM

LIC. COLÓN RODRÍGUEZ, JOSÉ E.
PEPECOLON1953@GMAIL.COM

LIC. RAMOS APONTE, RAMON L
RAMON.RAMOS@JSYALAW.COM

LIC. SALICHS, JUAN C.
JSALICHS@SPLAWPR.COM

LIC. SECRETARY (OR) COURT OF APPEALS
NOTIFICACIONESTA2@PODERJUDICIAL.PR

SECRETARY OF THE SUPREME COURT OF PR
NOTIFICACIONESTSPR@GMAIL.COM

IN SAN JUAN, PUERTO RICO, SEPTEMBER 07, 2023.

ATTY. JAVIER O. SEPÚLVEDA RODRÍGUEZ
CLERK OF THE SUPREME COURT

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BY: F/ ROSALIA PABÓN RIVERA
ASSISTANT SECRETARY

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AT THE SUPREME COURT OF PUERTO RICO
ROOM II

Bautista Cayman Asset Company

Respondent

Central Produce El Jibarito, Inc.; O.M.D. Real Estate, Inc.;
Orlando Mayendía Díaz; Puerto Rico Supplies Group, Inc.;
Agroproduce, Puerto Rico, Inc.

Petitioners

CC -2023-0189

CERTIORARI

Dispatch Chamber composed of the Associate Judge Mr. Martinez Torres as its President, the Associate Justices Mr. Koithoff Caraballo, Mr. Feliberti Cintrón and Mr. Colón Pérez.

RESOLUTION

In San Juan, Puerto Rico, April 21, 2023.

To the party's petition for certiorari petitioner, Puerto Rico Supplies Group, Inc., is provided by the There is no place.

It was agreed by the Court and certified by the Clerk of the Supreme Court.

Javier O. Sepulveda Rodriguez
Clerk of the Supreme Court

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Appendix D

From: NoReply@poderjudicial.pr
Sent: Wednesday, September 6, 2023 10:26 AM
To: Thomas Trebilcock
Subject: Electronic Notification CC-2023-0189

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
SUPREME COURT

BAUTISTA CAYMAN ASSESTS COMPANY
RESPONDENT
VS.
CENTRAL PRODUCE EL JIBARITO, INC. and
OTHERS
PETITIONERS

CASE NUMBER: CC-2023-0189
ORIGINAL: K CD2012-3052
APPEALS: KLCE202201297
MONEY COLLECTION
CIVIL ACTION OR FELONY

MR. TREBILCOCK HORAN, THOMAS
TT@TREBILCOCKLLC.COM

N O T I F I C A T I O N

I CERTIFY THAT IN CONNECTION WITH THE
SECOND MOTION FOR RECONSIDERATION,

THE COURT ISSUED THE ACCOMPANYING
RESOLUTION.

Click [here](#) to access the electronic document that is the
subject of this notification. The document will be available at

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through this link for 45 days from the date on which the notification was filed in the file.

OMD REAL ESTATE
PO BOX 11909
SAN JUAN PR 00922

LIC. AGUILA MELÉNDEZ, GUELMARIE
GAGUILA@SPLAWPR.COM

LIC. APONTE MELLADO, RUBÉN
RUBEN.APONTE@JSYALAW.COM

LIC. COLÓN RODRÍGUEZ, JOSÉ E.
PEPECOLON1953@GMAIL.COM

LIC. RAMOS APONTE, RAMON L.
RAMON.RAMOS@JSYALAW.COM

LIC. SALICHS, JUAN C.
JSALICHS@SPLAWPR.COM

SECRETARY OF THE SUPREME COURT OF PR
NOTIFICACIONESTSPR@GMAIL.COM

IN SAN JUAN, PUERTO RICO, SEPTEMBER 06, 2023.

ATTY. JAVIER O. SEPULVEDA RODRIGUEZ
CLERK OF THE SUPREME COURT

BY: F/ EVELYN RAMOS VELILLA
ASSISTANT SECRETARY

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AT THE SUPREME COURT OF PUERTO RICO

Bautista Cayman Asset Company

Respondent

Central Produce El Jibarito, Inc.; O.M.D. Real Estate, Inc.;
Orlando Mayendía Díaz; Puerto Rico Supplies Group, Inc.;
Agroproduce, Puerto Rico, Inc.

Petitioners

CC -2023-0189

Summer Chamber composed of Presiding Judge Oronoz Rodríguez, the Associate Justice Mr. Kolthoff Caraballo, Associate Justice Mr. Feliberti Cintrón and Associate Justice Mr. Estrella Martinez.

RESOLUTION

In San Juan, Puerto Rico, September 1, 2023.

In view of the second motion for reconsideration filed by the petitioner, it is dismissed. Abide by the decision of this Court.

It was agreed by the Court and certified by the Clerk of the Supreme Court.

Javier O. Sepulveda Rodriguez
Clerk of the Supreme Court

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32A L.P.R.A. Ap. V, Rule 49.2

Rule 49.2. Mistakes, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, etc.

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a judgment, order, or proceeding for the following reasons:

- (a) mistake, inadvertence, surprise, or excusable neglect;
- (b) newly discovered material evidence by which due diligence could not have been discovered in time to move for a new trial under Rule 48;
- (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (d) the judgment is void;
- (e) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- (f) any other reason justifying relief from the operation of the judgment.

The provisions of this rule do not apply to judgments in divorce actions, unless the motion is based on reasons (c) or (d). The motion shall be made within a reasonable time, but in no case shall it be made more than six (6) months after the judgment, order, or proceeding was entered or taken. A motion under this Rule 49.2 does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to:

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- (1) entertain an independent action to relieve a party from a judgment, order, or proceeding;
- (2) grant relief to a party not actually notified; and
- (3) set aside a judgment for fraud upon the court.

While an appeal or certiorari is pending final resolution in a voluntary jurisdiction proceeding, the respondent court may not grant relief under this rule, unless with leave of the appellate court. 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.

The United States Supreme Court in *Rosewell v. LaSalle National Bank*, 450 U.S. 503, 512, 101 S. Ct. 1221, 1228, 67 L. Ed. 2d 464 (1981), reaffirmed the well-established rule that HN8 "the starting point of our inquiry is the plain language of the statute itself."

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CERTIFICATION

CERTIFIED: That the attached document(s) is (are) true and correct translation(s) of the original document(s) from *Spanish* into English.

Moreover, that I am a Federally Certified Court Interpreter & Translator for the Administrative Office of the U. S. Courts within the active list of Certified Interpreters and Translators at the U.S. District Court for the District of Puerto Rico.

CASE: Bautista Cayman Asset Co. vs. Central Produce El Jibarito, Inc.

DOCUMENT(S): TRIAL COURT, SAN JUAN – K CD2012-3052, APPELLATE COURT, KLCE-2022-01297, AND SUPREME COURT – CC-2023-0189.

DATE: **12/03/2023**

REGISTRY CODE: TT-002-03/12/23

Carlos T. Ravelo
AOUSC Certification # 95-063



Heriberto López Guzmán
H. López Law LLC
Metro Office Park
Building 11, Suite 105A
Guaynabo, P.R. 00968
(787) 948-0067
hlopez@lopezlaw.com

December 5, 2023. *Counsel for Petitioners*