

**IN THE MATTER OF AN ARBITRATION UNDER THE DOMINICAN
REPUBLIC CENTRAL AMERICA FREE TRADE AGREEMENT AND THE
UNCITRAL RULES OF ARBITRATION (2010)**

**DAVID R. AVEN, SAMUEL D. AVEN, CAROLYN J. PARK, ERIC A. PARK,
JEFFREY S. SHIOLENO, DAVID A. JANNEY AND ROGER RAGUSO
(United States of America) (Claimants)**

v

THE REPUBLIC OF COSTA RICA (Respondent)

**SECOND WITNESS STATEMENT
OF MANUEL ENRIQUE VENTURA RODRIGUEZ**

I, **MANUEL ENRIQUE VENTURA RODRIGUEZ**, of San José, Costa Rica, SAY as follows:

1. I am the same Manuel Ventura that gave a witness statement on November 17, 2015 (my “**First Witness Statement**”). I make this second statement in support of the Claimants and their Reply Memorial in these proceedings.
2. The matters contained in this witness statement are true to the best of my knowledge, information and belief. The facts and circumstances contained in this statement are within my own knowledge or derived from information and documents provided to me by those reporting to me, in which case I refer to the corresponding source of information.
3. I confirm that the Claimants’ lawyers, Vinson & Elkins RLLP, have assisted me in preparing this statement, but I also confirm that its contents set out my evidence to the Tribunal in these proceedings.
4. I make this statement to address matters arising from the Respondent’s Counter Memorial dated April 8, 2016, as well as the Respondent’s evidence, expert reports, and witness statements referred to therein.

5. In my First Witness Statement, I have already set out the background to my involvement in the Las Olas project and I will not repeat that here. In this statement, to the extent that I am able, I provide further details of my involvement with the Las Olas project and respond to other discrete issues raised by the Respondent.

I. Line of Ownership in the Enterprises

6. I note the Respondent takes issue with what it says is missing information in relation to the Claimants' ownership of the Enterprises that own the individual plots of land that make up the Las Olas project site.
7. I was informed by Mr Aven of a break-in at the Las Olas project site offices in the summer of 2012, during which the books detailing the Claimants' ownership of shares in the Enterprises, amongst other things, were taken. As a result of the break-in I was tasked by Mr Aven with preparing documentation relating to the lost books. To that end, I prepared formal notices for the company registry to provide new numbers for the new books for each Enterprise. These formal notices in public deed format permit a company under Costa Rican law to obtain authorization to issue new company books in order to prove ownership of the company.

II. Disclosure of Information by Costa Rican Authorities

8. I have read paragraphs 529 to 540 of the Counter Memorial regarding the investigations of MINAE and SINAC and Costa Rica's allegation that the resulting reports are "*preparatory acts*" as a matter of Costa Rican law. I disagree with this assessment. Under Costa Rican law, the principle of due process (which is derived from Constitutional Court Decision 1739-92, which decision specifically outlines the main guidelines for due process in Costa Rica)¹ provides that all governmental authorities considering to impose a sanction or take action that may affect specific rights granted to a person have a duty to inform, duly and promptly, all parties that are under investigation of the actions being taken against them or that could affect them. They are also required to inform the party that is subject to the investigation the reason for the investigation and its possible outcome.
9. At paragraph 537 of the Counter Memorial, Costa Rica says that the communications of Ms Diaz of the *Defensoria* related to "*complaints against the public administration*" and therefore did not involve private parties and on this basis the only parties notified are the administrative institutions being accused. Whilst it might be strictly true that the focus of the *Defensoria*'s investigations was the acts of the public administration in granting permits and licences to the Las Olas project, it is not true to say that they did not involve private parties. The acts that were being investigated by the *Defensoria* granted rights to the Las Olas project and the Claimants. So whilst the *Defensoria* might only have been required to notify the public parties it was investigating once a formal decision was taken, the effect was to deprive the

¹ Exhibit C228, Constitutional Court Decision 1739-92

Claimants (who stood to lose rights as a result of the outcome of the investigation) of the right to be kept informed of the investigative process.

10. In my view as a Costa Rican lawyer who specializes in Constitutional and Administrative Law, the Costa Rican authorities acted in breach of Costa Rican law in failing properly to inform Mr Aven and the other investors about the investigations that were being conducted against them. Article 308 of the *Ley General de la Administración Pública*,² which clearly stipulates that in any administrative proceeding that may affect in any way the rights of an individual, that individual must be granted a hearing in order to defend him or herself, in conjunction with the principles of due process outlined by the Constitutional Court in its Decision 1739-92, were not followed. Costa Rican Government entities consistently comply with the terms of article No. 308 of the *Ley General de la Administración Pública*, and, in this instance, there was no indication as to whether they intended to apply it, or, why they did not.

IV. Current Site Conditions

11. As I mentioned in my First Witness Statement, there is at present a big problem with squatters on the Las Olas site. People continue to trespass on the property and around three hundred and sixty huts have been built. It seems as though the squatters are intent on taking over the land.
12. As I explained in my First Witness Statement, on behalf of the Claimants I have filed requests with the Ministry of Security, the Municipality of Parrita, the local police and the Constitutional Court to get them to remove the squatters but so far nothing has been done to get rid of them; the Ministry recently notified Mr Aven that the eviction order had been approved, but no action has been taken as of today. Additionally, I personally went to the police office in Parrita two weeks ago and spoke to the officer in charge, and he indicated to me that the main office in San Jose had not informed them of the decision to proceed with the eviction.
13. Since my First Witness Statement, I have delivered several letters to the authorities on behalf of Mr Aven, including a letter dated November 2, 2015 informing the prosecutor, Mr Martinez, of the problem with the squatters onsite³ (copied to Luis Piccado, Roland Manfredi and Christian Bogantes of MINAE, the Mayor of Parrita, Ms Monica Vargas, the Chief Prosecutor, Mr Jorge Chavarri, and the President of Costa Rica, Mr Luis Guillermo Solis) and a letter dated November 30, 2015 addressed to the Ministry of Public Security authorising entry onto the Las Olas site to clear the squatters and their illegal shacks.⁴

² Exhibit C277, *Ley General de la Administracion Publica*, Article 308

³ Exhibit C261, Letter from David Aven to Luis Martinez regarding squatters at Las Olas, November 2, 2015

⁴ Exhibit C263, Letter from David Aven to Ministry of Public Security authorizing entry into Las Olas to evict squatters, November 11, 2015

14. I also spoke to the Ministry of Security on at least one occasion in early November 2015 about the squatters and the person I spoke to (whose identity I cannot remember) said that the Las Olas site was in the queue for them to go down there and evict the trespassers.
15. On November 18, 2015, we received the Constitutional Court's decision on Las Olas's claim against the Municipality of Parrita and the Ministry of Public Security for failing to take action to evict the squatters.⁵ In its decision, the Court held that this matter had to be addressed directly with the Ministry and that the Constitutional Court lacked jurisdiction.
16. On November 24, 2015, I spoke with Ms Vargas at the Municipality about the issue and she informed me that the Municipality would attend the property accompanied by the police at 9 a.m. the next day, November 25th, in order to review the situation. I understand that other visits have taken place but still the squatters are there.
17. On December 9, 2015, I also sent a further letter to Mr Martinez on Mr Aven's behalf, notifying him of the escalating situation with the squatters at Las Olas and the authorities' continued failure to take action.⁶ Like the first such letter, that letter was also copied to Luis Piccado, Roland Manfredi and Christian Bogantes of MINAE, the Mayor of Parrita, Ms Monica Vargas, the Chief Prosecutor, Mr Jorge Chavarri, and the President of Costa Rica, Mr Luis Guillermo Solis.
18. Then, only recently, on June 16, 2016, I received on behalf of Mr Aven and the other investors at Las Olas a communication from the Ministry of Security asking for clarification as to ownership of each of the lots before they decide how to proceed in relation to the squatters, although their letter is not very clear.⁷ In their communication, they note the existence of 362 shacks. I followed up with a visit to the Municipality in order to press the authorities to pursue the eviction right away. Throughout all of this, I have also been in discussions with neighbors of Las Olas about the problem with the squatters.
19. Still, however, the Costa Rican government has not taken any action to remove the squatters or to prevent more of them entering the site with vehicles and on foot, constructing shacks and planting crops. As a result of the squatters' conduct, the site has been altered: trees have been cut in many areas and shelters have been erected. It is no longer safe to go onto the site without a police escort.

⁵ Exhibit C181, Constitutional Court decision on Writ of *amparo*, November 18, 2015

⁶ Exhibit C264, Letter from David Aven to Luis Martinez regarding squatters at Las Olas, December 9, 2015

⁷ Exhibit C264, Letter from the Ministry of Public Security regarding ownership of the lots

V. My alleged communications with the Mayor of Parrita

20. I have read Ms Vargas's First Witness Statement and I wish to comment on paragraph 54 of that statement, in which she claims that the Claimants sent a handwritten note to the police expressing "*their total disinterest in the issue [of the squatters] since it did not meet the minimum requirements to be considered as a formal complaint.*" I understand that Ms Vargas claims that she saw this note on the Mayor of Parrita's WhatsApp messaging account and that I sent it to him but that the Respondent is refusing to produce a copy of the WhatsApp messages.
21. Ms Vargas's claims are totally false. I have never communicated with the Mayor of Parrita via WhatsApp messaging, only ever by text message on a couple of occasions. I have attached copies of all of my exchanges with him to this statement.⁸ In my messages to him, I expressed the Esterillos Oeste residents' concern over the lack of action being taken to remove the squatters from Las Olas and asked for his help. I also asked him to help in dealing with the bureaucracy the Claimants encountered at the Ministry of Public Security, in order to speed up the eviction process.⁹ Absolutely no notes were exchanged and I have never communicated the Claimants' disinterest in having the squatters removed to anyone. On the contrary, as can be seen from the many requests and letters I have filed, I have been working tirelessly to get the Costa Rican authorities to act to remove the squatters from the Las Olas site. Ms Vargas's allegation is completely divorced from reality, as is clear from my exchanges with the Mayor and everything else I have done to assist the Claimants in getting the squatters evicted and from the Respondent's inability to produce a copy of the note or WhatsApp message Ms Vargas allegedly saw.

I believe the facts stated in this WITNESS STATEMENT are true.

Signed.....

Manuel Enrique Ventura Rodriguez

Date.....7/26/2016

⁸ Exhibit H-Copies of text messages exchanged by Manuel Ventura with the Mayor of Parrita

⁹ *Id.* C 27-1