

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

BIRTH OF A NEW WORLD MONUMENT LLC
and ZURAB TSERETELI

Plaintiffs,

v.

JOSÉ I. GONZÁLEZ FREYRE,
PAN AMERICAN GRAIN COMPANY, INC.,
and COLUMBUS PARK CORPORATION

Defendants.

Civil No. _____

COMPLAINT

JURY TRIAL REQUESTED

Plaintiffs Birth of a New World Monument LLC (“BONWM”) and Zurab Tsereteli (“Tsereteli,” together with BONWM, the “Plaintiffs”) bring this action against José I. González Freyre (“González”), Pan American Grain Company, Inc. (“Pan American Grain”), and Columbus Park Corporation (“Columbus Park,” together with González and Pan American Grain, the “Defendants”), alleging on information and belief, except as to allegations that pertain to the Plaintiffs specifically, which are based on personal knowledge, as follows:

PRELIMINARY STATEMENT

1. Tsereteli, a world renowned artist, the President of the Russian Academy of Arts, and a UNESCO goodwill ambassador, created the Birth of a New World Monument (the “Monument”). The Monument depicts Christopher Columbus at the helm of his ship, and is among the tallest sculptures in the Western Hemisphere at 260 feet. It is constructed with over 600 tons of bronze, copper sails, and a 400-ton steel infrastructure.

2. In addition to being a priceless addition to the cultural and artistic appeal of Puerto Rico, the monument represents a significant economic benefit to the island. A preliminary study estimated that it is expected to attract at least 300,000 tourists per year once it is open to the public. Tsereteli and BONWM have also invested millions of dollars to install the Monument, much of which was devoted to hiring local construction companies and obtaining and fabricating steel and bronze locally.

3. The Plaintiffs and the Defendants worked together for years to find a suitable location to install the Monument before landing on Arecibo, Puerto Rico. In numerous agreements along the way, the Defendants repeatedly agreed to fund the installation of the Monument, but failed to do so.

4. The Plaintiffs eventually entered into an agreement with the Defendants on November 21, 2013 (the “2013 Agreement,” attached hereto as Ex. A), allowing construction to start at the last possible moment before the crucial Federal Aviation Authority (“FAA”) permit expired. In short, the 2013 Agreement provided that the Plaintiffs would install the Monument and the Defendants would transfer land for the Monument, a parking lot, and a visitors’ center to the Plaintiffs. The Defendants remained free to develop the adjacent land.

5. Relying on the 2013 Agreement, the Plaintiffs invested millions of dollars of their own money to install the Monument. In contrast, the Defendants have not taken a single step to secure the Plaintiffs’ interests in the land nor transfer the title, enriching themselves at the Plaintiffs’ expense.

6. Moreover, the Defendants had originally lured the Plaintiffs to Arecibo with promises that the Monument would be the anchor attraction of a grand development project that would bring even more tourists to the area. The Defendants shared project plans and purportedly obtained permits and proposals to suggest their commitment to this end. However, the Defendants have failed to implement *any* other aspect of the proposed development plan, and do not appear intent on doing so unless Tsereteli finances the development. The Defendants continue to sit idle while González's property value drastically increases through no effort of his own.

7. The Plaintiffs' continuing injuries are the direct result of the Defendants' actions.

8. The Plaintiffs' substantial investment in the Monument and the land upon which the Monument stands, along with the land designated for a visitors' center and parking lot, face significant risks absent an order from this Court. This Action is necessary for the Plaintiffs to obtain equitable relief to protect their interest in the Monument, visitors' center, and parking lot, as well as to obtain damages for the wrongs complained of herein.

9. The Defendants' actions give rise to a number of claims, including breach of contract under Article 1077 of the Puerto Rico Civil Code (the "Civil Code"), breach of the duty of good faith under Article 1210 of the Civil Code, fraudulent inducement, unjust enrichment, *culpa in contrahendo* and fraud liability under Article 1802 of the Civil Code, fraud, and declaratory judgment.

10. Additionally, Plaintiffs request a provisional remedy in the form of an order from this Court to the Property Registry of Puerto Rico, Section Arecibo I, that the Registrar

enter a Cautionary Notice for said property under Article 44 of the Mortgage Law of Puerto Rico, Law 210-2015, as amended.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331(a)(1) because the matter in controversy exceeds \$75,000, exclusive of interest and costs, and contains complete diversity of citizenship, whereby the Plaintiffs are citizens of New York and Russia, while the Defendants are citizens of Puerto Rico.

12. Venue properly lies in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims herein occurred in this District.

PARTIES

13. Plaintiff BONWM is a New York limited liability company with offices at 40 Sutton Place, New York, New York.

14. Plaintiff Tsereteli is an internationally acclaimed artist and is the President of the Russian Academy of Arts. Tsereteli resides in Moscow, Russia.

15. Defendant González is a resident of Puerto Rico. González is the President of Pan American Grain and Columbus Park.

16. Defendant Pan American Grain is a corporation organized under the laws of Puerto Rico and is headquartered in Guaynabo, Puerto Rico.

17. Defendant Columbus Park is a corporation organized under the laws of Puerto Rico.

18. Defendants Pan American Grain and Columbus Park each list as their resident agent the following: Alberto Fernandez, 9 Claudia, Ameila Ind. Park, Guaynabo, Puerto Rico 00968.

FACTUAL ALLEGATIONS

The Birth of a New World Monument

19. The Monument was installed in Arecibo, Puerto Rico. It stands at 260 feet tall, making it among the tallest sculptures in the Western Hemisphere. It is made up of 600 tons of bronze, as well as copper sails, and over 400 tons of steel in the infrastructure.

20. The Monument was created by Tsereteli and depicts Columbus traversing the Atlantic Ocean:



21. In September 2017, when Hurricane Maria made landfall on Puerto Rico, the Monument withstood the 100-year hurricane winds entirely unscathed.

The Mayaguez Agreement

22. The Monument was shipped to Puerto Rico in 1998 pursuant to an agreement between the Municipality of Cataño, Puerto Rico and Tsereteli. The shipment consisted of 2,750 separate bronze pieces weighing 600 tons, and hundreds of pieces of steel infrastructure weighing 401 tons. For various reasons, the Monument could not be installed in Cataño.

23. In 2007, Holland Group Port Investment (Mayaguez), Inc. (“Holland Group”),¹ a corporation of which González was President, learned of the existence of the Monument. At that time, Holland Group had a Lease and Development Agreement with the Mayaguez Port Commission dated as of May 11, 2007 (the “Port Agreement”). Holland Group proposed installing the Monument in Mayaguez in time for the Pan American Games and to serve as a tourist attraction to develop the Port of Mayaguez as a cruise ship destination.

24. On December 17, 2007, a Memorandum of Understanding was entered into between Tsereteli, Holland Group—represented by González and Frank Haacke Verboeket—and the Mayaguez Port Commission—represented by its President, Bennis Bechara Bravo (the “Mayaguez Agreement”).

¹ Holland Group was a corporation organized under the laws of Puerto Rico and a party to the 2013 Agreement (represented by González). On February 9, 2018, Holland Group filed a Certificate of Revocation of the Certificate of Incorporation with the Puerto Rico Department of State. On February 19, 2018, the cancellation of Holland Group’s corporate registration was certified by Puerto Rico’s Secretary of State, Luis G. Rivera Marín.

25. The Mayaguez Agreement provided, among other things, that: (A) Holland Group would assume all costs in connection with the installation of the Monument; and (B) that Holland Group would transport and store the Monument *at its sole expense*.

26. Thereafter, twelve Russian artisans/welders, one Russian architect, one Russian engineer, and one translator from Russia lived and worked in Mayaguez at Tsereteli's sole expense, including housing, food, transportation, and salary. These workers examined, counted, and treated all 2,750 pieces of bronze and examined and treated hundreds of pieces of steel infrastructure, with much of the steel needing to be refabricated. Additionally, these workers performed a test assembly of the Monument to ensure all pieces were accounted for. Accordingly, Tsereteli retained and paid for legal counsel to submit H-1 visa applications for the Russian workers.²

27. During 2008 and 2009, González and the Mayor of Mayaguez, José Guillermo Rodríguez, were at odds with one another over the Port Agreement. In mid-September 2009, according to an article published in El Nuevo Día, González appeared on a radio interview on WKAQ and publicly accused the mayor of political corruption, claiming that he only favors his political donors. In response, the mayor called into the radio station and accused González of being a "convicted liar," alluding to the fact that González previously pleaded guilty to giving false statements to the FBI and was sentenced to six months of house confinement, one year of probation, and a \$5,000 fine, all facts unknown to Tsereteli at that time.

² In May 2013, in advance of installing the Monument in Arecibo, twenty-two Russian artisans/welders received work permits allowing them to travel to Puerto Rico to assemble the Monument. This process was also undertaken at the sole expense of Tsereteli.

28. Thereafter, in January 2009, González suggested to Tsereteli by email “that there are locations that could allow for a quicker erection [of the Monument].”

29. In early January 2010, González emailed Tsereteli’s attorney, representing that Holland Group was in opposition with Mayaguez over the Port Agreement and that “Mayaguez’s proposals were so unacceptable to [them] that it feels as a poor joke.”

The Arecibo Agreements

30. On February 4, 2010, González proposed by email that the Monument be installed in Arecibo, Puerto Rico. In particular, he proposed erecting the Monument on property that he himself had purchased for \$1.6 million in 2008.

A. The April 2010 Agreement

31. On April 6, 2010, González sent an email regarding the installation of the Monument in Arecibo (the “April 2010 Email”), stating, in relevant part:

This is the deal in a Nut Shell ... ***González will fund the installation of the Monument and development of the New World Park***, which shall not be contingent upon the sale of the tax credits.

[Emphasis added.]

32. For several months, Tsereteli assumed the parties were proceeding on the basis of the April 2010 Email.

B. The July 2010 Agreement

33. In July 2010, the parties met in Puerto Rico, at which time González repudiated the promises made in the April 2010 Email. Instead, a second agreement was reached involving revised terms, including that González would contribute “the land upon which the Monument would be installed, and all costs related to the installation and assembly of

the Monument, including: engineering, permitting and costs of Russian and Puerto Rican workers” (the “July 2010 Agreement”).

34. In September 2010, González traveled to Moscow and visited in person with Tsereteli to discuss the Monument project in Arecibo, including the July 2010 Agreement.

35. On September 28, 2010, Tsereteli’s attorney (at Tsereteli’s direction) sent the terms of the July 2010 Agreement to González. Based upon the parties’ direct negotiations in Moscow, the September 28th email provided, “you assured [Tsereteli] that you would underwrite all costs in connection with the installation of the Monument, including all expenses related to [Tsereteli]’s team.”

C. The September 2010 Agreement

36. On September 29, 2010, González repudiated the July 2010 Agreement, and provided new terms (the “September 2010 Agreement”):

What I understood was the following: Zurab [Tsereteli] would cover the artistic and artisanal work related to the statue. ***We would cover the engineering, structural and civil works. We are also willing to take care of the housing and transportation of Zurab’s team.*** We will also supply a place, tools and equipment for Zurab’s team to work and the miscellaneous items in the list that I was supplied. I am ready to accept Zurab’s team in November.

[Emphasis added.]

D. The October 2010 Agreement

37. Based upon the September 2010 Agreement, on October 12, 2010, Tsereteli’s attorney sent González a revised draft agreement (the “October 2010 Agreement”), stating in relevant part:

8. BONWM LLC is responsible for the Tsereteli Team and its financial responsibilities shall be limited to: a) The salaries of the Tsereteli Team and the workers' compensation and disability insurance and payroll taxes incident thereto; b) Expenses related to obtaining visas for the Tsereteli Team; and c) Tsereteli's personal travel related expenses. ***With the exception of those financial responsibilities expressly set forth in Paragraph 8 hereof, the Arcibo Parties [the Defendants] shall bear any and all other expenses related to the construction of the Monument.***

[Emphasis added.]

38. González replied over two weeks later, on October 25, 2010, and again reneged on his word, stating “the contract needs a lot of work.”

39. In response, on October 26, 2010, Tsereteli's attorney emailed González, requesting his “lawyers' comments as soon as possible.”

40. Nearly a month later, on November 20, 2010, Tsereteli's attorney emailed González, alerting him that they “had not [received a] response from [the Defendants'] attorneys on the draft agreement.” No response came.

E. The Columbus Park Project Proposal

41. Notwithstanding González and his attorneys refusal to respond to the October 2010 Agreement, on December 16, 2010, González presented a Columbus Park Project proposal to La Oficina de Gerencia de Permisos (OGPe), with the Monument being the anchor attraction (the “Columbus Park Project”). The Columbus Park Project was assigned project number 2010-PRE-06654.

42. The proposal contained a “Master Plan” for the Columbus Park Project, including the location of the Monument, with a corresponding visitors' center and parking lots surrounding it. The Columbus Park Project map represented Tsereteli's understanding

that the Monument would be located in the northeast corner of the property near the coast and the public road, which is shown by the circle in the top left corner of this map:



43. Thereafter, permits required for the Columbus Park Project were obtained. Because of the Monument's height, a permit from the U.S. Federal Aviation Administration ("FAA") was required. Accordingly, Tsereteli retained experienced FAA counsel from Washington, D.C. to obtain this permit (*i.e.*, a "No Hazard Letter"). On December 8, 2010, the FAA approved the site in Arecibo, Puerto Rico for installation of the Monument. The FAA permit had an end date of June 8, 2012.

44. While the FAA permit was being dealt with by Tsereteli's team, González and the other Defendants continued to evade any formal agreement with Tsereteli, forcing the parties to proceed based exclusively on their earlier oral agreements.

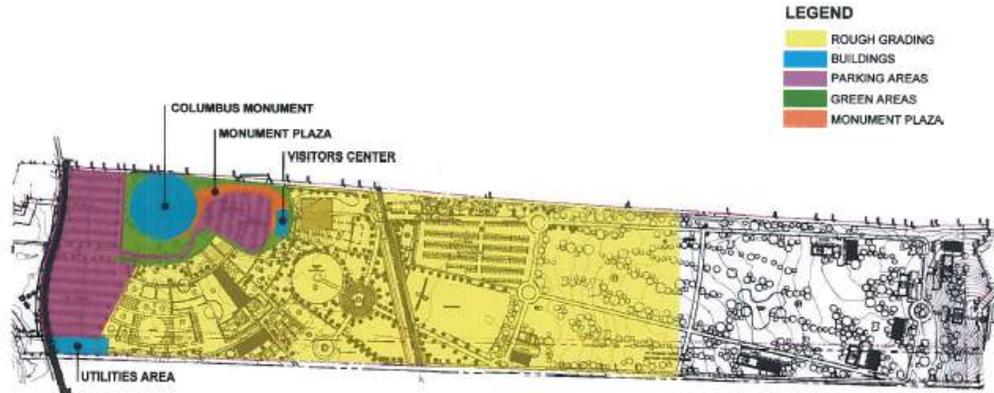
45. On May 31, 2012, Tsereteli's attorney advised González and his attorney that the FAA permit had been extended until December 1, 2013; however, "This is a drop dead date. If we are not vertical (*i.e.* above ground, with some height) by that date, there will be no further extensions, and we will not be allowed to apply for any other FAA permits for this statue on the island of Puerto Rico."

46. To adhere to the FAA requirements and have construction sufficiently underway by December 1, 2013, significant work and capital expenditures were necessary, including an array of studies, such as geotechnical, topography, hydraulic, and flora and fauna, among others. The studies were necessary to allow for engineers to design a foundation sufficient to support a 260-foot bronze monument on a sandy hill in Caribbean winds. In order to meet the FAA drop-dead date, this work had to commence well before December 1, 2013.

47. In April 2013, with González's full awareness and involvement, work to install the Monument in Arecibo began. Tsereteli retained structural engineer Fred Worstell ("Worstell"), President of Dresdner Robin Consulting, to oversee the installation.

48. On April 24, 2013, Worstell and González met in Puerto Rico to discuss the installation. Worstell realized González was not going to get all of the permits required for the Columbus Park Project prior to the FAA deadline. In order to ensure that the Plaintiffs could begin erecting the Monument prior to the deadline, Worstell proposed prioritizing the development of a section of the project – the "Phase One" plan, which included the Monument, a parking lot, and a visitors' center.

49. Around May 15, 2013, Pan American Grain sought and received a proposal for design, permitting and inspection services related to the Phase One plan from P&S Consultants (the "May 2013 Proposal"). The proposal from P&S Consultants included the concept of a "Phase 1" project, which was limited to the Monument, a visitors' center, and parking lots:



50. On May 23, 2013, Tsereteli's attorney and Worstell met with González in New York, where they reminded González of the terms of the October 2010 Agreement, specifically that González was responsible for the expenses related to the construction of the Monument, including the foundation, and Tsereteli was responsible for assembling the Monument.

51. On May 29, 2013, the parties agreed that time was of the essence considering the approaching December 1st deadline. The parties thus agreed to share the cost of the various studies required for the development the Columbus Park Project, as described above.

52. Notably, González demanded that Tsereteli split the costs equally for the studies, which related to the entire Columbus Park Project, although the portion of the studies attributable to the installation of the Monument, visitors' center, and parking lot—*i.e.* Tsereteli's limited interest in the project—was very small compared to the project as a whole.

53. Contrary to the numerous oral agreements made to date, this was the last time González spent any money to install the Monument.

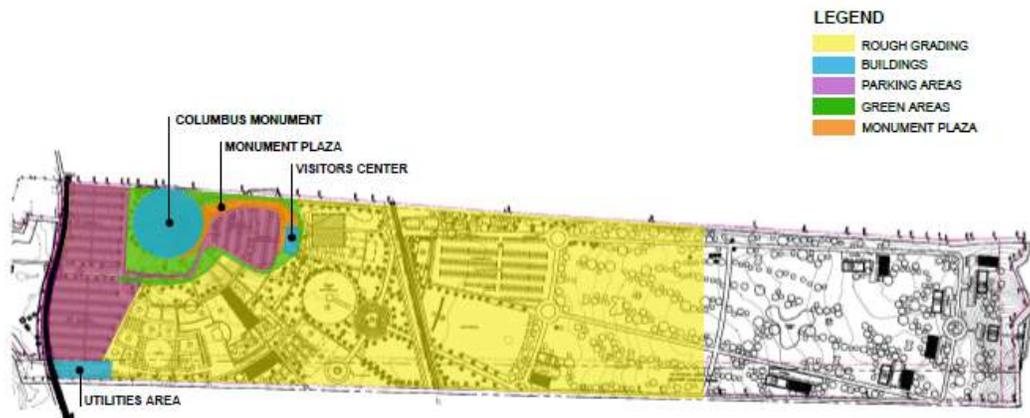
F. The 2013 Agreement

54. On September 10, 2013, Tsereteli's attorney sent González a draft formal agreement regarding the installation of the Monument in Arecibo. Thereafter, González continued to evade telephone calls and emails requesting comment on the formal agreement notwithstanding the looming December 1st FAA deadline.

55. On October 1, 2013, Tsereteli's attorney again sent the draft agreement to González.

56. On October 23, 2013, Tsereteli's attorney once again emailed González about the draft agreement. This email included a revised draft, providing that each party would contribute \$1 million cash for the installation of the Monument (the "October 2013 Agreement").

57. Throughout October and November 2013, the Plaintiffs and the Defendants continued to discuss the Phase One plan, as denoted in the May 2013 Proposal, which remained limited to the construction of the Monument, visitors' center, and parking lot. For example, P&S Consultants created a proposal, dated October 23, 2013, for Defendant Pan American Grain (the "October 2013 Proposal"), depicting a map of the Phase One plan that was largely unchanged from the May version:



58. Similarly, P&S Consultants created another version of the proposal that was sent to Worstell, dated November 8, 2013 (the “November 2013 Proposal”), which still included the Monument, visitors’ center, and parking lot in Phase One, but reduced the scope of the initial project to limit the amount of grading required.

59. Importantly, Tsereteli’s interest in the Columbus Park Project—the Monument, visitors’ center, and parking lot—*remained unchanged* from the December 2010 proposal to the OGPe through November 2013.

60. On November 5, 2013, notwithstanding the Mayaguez Agreement—pursuant to which González, on behalf of Holland Group, agreed to cover the storage of the Monument *at its sole expense* (see *supra* ¶ 25)—González demanded a check for \$20,000 for storage of the Monument. Indeed, approximately two months later, González’s foreman advised Tsereteli’s team that González would “cease providing services until all past due invoices are fully taken care, the sooner the better[.]” thereby forcing Tsereteli to pay for storage obligations that González had committed to covering.

61. Nonetheless, with repeated warnings that December 1st was the “drop dead” date, and González’s active participation in having studies conducted and permits obtained in time to begin construction on the Monument’s foundation before that date, on November 16, 2013, Gonzalez sent an email to Tsereteli’s attorney stating, “just two weeks ago, I was inform[ed] by Fred [Worstell] that it was Tsereteli’s desire to erect the Monument outside the scope of the Columbus Village [Park] project.” Contrary to González’s email, Tsereteli intended to (and did) install the Monument pursuant to the Columbus Park Project proposal, *i.e.*, the agreement Tsereteli understood to be in place.

62. In reality, González was, for all intents and purposes, trying to extract last minute concessions to the series of earlier agreements pursuant to which he promised to finance the installation of the Monument, when Tsereteli’s back was against the wall to commence installation in light of the imminent December 1st deadline.

63. As a result, Tsereteli was forced to install the Monument at his own expense, but retained an interest in acquiring land sufficient for the Monument, a visitors’ center, and a parking lot.

64. In confirmation of this understanding, on November 16, 2013, González sent an email to Tsereteli’s attorney, stating in relevant part:

we are willing to segregate an area of approximately 12,000 meters and demolish a two story cement dwelling in the center of the proposed Columbus village in order to clear the path of the area that the statue will occupy.

65. In fact, this is the precise area where the Monument currently stands.

66. On November 18, 2013, the Washington, D.C. firm Garvey, Schubert, Barer (Tsereteli’s FAA counsel) sent an email to Worstell that stated, in relevant part:

Fred- I spoke to Emily this morning about the FAA permit and the regulatory risks involved. She will respond in writing to you, but *from my perspective, this project is now or never*, and you will need to get as far along as fast as you can and then hope that Emily and I can keep the FAA permit alive.

[Emphasis added.]

67. On November 21, 2013, González sent the following email to all parties involved with the Monument: “In order to avoid further confusion, on December 1, 2013 we will stop servicing the Monument until we are paid in advance for our services.”

68. On November 22, 2013, González’s attorney sent Tsereteli’s attorney a “clear and final document Zurab Monument” (the 2013 Agreement). The 2013 Agreement is attached hereto as Exhibit A.

69. The 2013 Agreement was entered into by BONWM (represented by Tsereteli), Pan American Grain (represented by González), Columbus Park (represented by González), and Holland Group (represented by González).

70. The 2013 Agreement contained the following key terms:

1. The parties previously have identified a parcel on Developer's land which includes an area for the Monument (hereinafter, the “Phase One Property”). A map delineating the Phase One Property is attached hereto as Exhibit 1.

2. Upon completion of 75% of the installation, Developer agrees to sub-divide its property at its sole cost and expense, and to transfer the in fee simple Phase One Property for \$1.00 outright to BONWM, or its designee. (BONWM’s architects will provide a description of the stage of construction, which represents 75% completion.) Immediately upon execution of this Agreement, a copy of this Agreement, or an appropriate facsimile or record of this commitment, shall be recorded with the official property records so as to provide BONWM with a first lien of highest priority on the Phase One Property. The parties shall execute a repurchase agreement (“pacto de retro”) for \$1.00 in the event the

Monument is not completed within two years after the 75% completion mark has been reached by BONWM.

3. The development on the Phase One Property will include only the installation of the Monument, a parking lot and a Visitors Center located on or adjacent to the parking lot. A map delineating the parking and Visitor Center is attached hereto as Exhibit 2. All other future phases at Developer's remaining land adjacent to the Phase One Property (the "Project") will be at the sole responsibility and discretion of Developer.

* * *

13. The Phase One Property shall at all times be provided with reasonable vehicular and pedestrian access to a public street, similar to the existing one, either by easement running with the land, or by transfer of the access road in fee simple. If there is any cost related to the development or improvement of the public street in order to provide such access, including, but not limited to, the installation of utility lines, no cost for such development or improvement shall be borne by BONWM but Developer shall be allowed to charge a reasonable access fee to vehicles entering the Phase One Property to cover its costs associated with its improvements, repairs and maintenance of such access, utilities and improvements.

14. Holland acknowledges that the visas for the Russian workers required to assemble the Monument are issued to Holland Group Port Investment (May), Inc. Holland agrees to keep all the Russian workers on its payroll until the Monument is completed. BONWM shall transfer to Holland Group Port Investment (May), Inc. all wages and other costs directly associated with such employment.

* * *

28. The parties acknowledge the complexities inherent in this undertaking and agree to proceed with the project on the basis of trust, good faith and fair dealing, and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner.

71. The 2013 Agreement also referenced three exhibits (Exhibits 1, 2, and 3), which would identify the "Phase One Property" in further detail, although the agreement itself

recognized that “[t]he development on the Phase One Property will include only the installation of the Monument, a parking lot and a Visitors Center located on or adjacent to the parking lot.”

72. In light of the imminent FAA deadline and need to commence construction immediately, Tsereteli executed the agreement without the exhibits. As discussed above, the exhibits were provided to Defendants from their consultants. Indeed, it was abundantly clear that the parties understood exactly what the Phase One Property included, *i.e.*, the land necessary for the Monument, visitors’ center, and parking lot. Given the language of the contract³ and knowledge of the parties, Tsereteli understood the exhibits would conform to the December 2010 Columbus Park Project Proposal, May 2013 Proposal, October 2013 Proposal, and November 2013 Proposal, all of which identified the Monument, visitors’ center, and parking lot in the same location.

73. On November 25, 2013, González’s attorney sent a copy of the 2013 Agreement executed by González on behalf of all parties besides BONWM, attaching exhibits never before seen or agreed to by Tsereteli. In fact, the exhibits attached to González’s agreement did not even conform to the language of the agreement itself. For example, while the 2013 Agreement provided, “A map delineating the parking and Visitor Center is attached hereto as Exhibit 2,” the exhibit 2 provided by González failed to include any reference to the previously agreed upon visitors’ center or parking lot.

³ Pursuant to Paragraph 1 of the 2013 Agreement, “The parties *previously have identified* a parcel on Developer’s [the Defendants] land which includes an area for the Monument. . .” (emphasis added).

74. Following receipt of González's agreement, Tsereteli's attorney corrected the exhibits and properly identified the parcel based upon all of the prior maps and agreements.

75. On January 6, 2014, Tsereteli's attorney sent González the final 2013 Agreement with the correct set of exhibits, which González said he would review.

76. Neither González nor any of his representatives objected to the corrected set of exhibits following González's review.

77. Installation of the Monument continued with González having knowledge and remaining informed throughout.

78. On July 12, 2014, after significant installation of the Monument had already occurred, González sent an email to Vasili Tsereteli (general manager of BONWM), copying others working on the Monument project, and essentially acknowledged his breach of the 2013 Agreement. In particular, the email contained the following:

Emily requested from us to add to the boundary of the monument 10 acres of land, in order to submit a permit. From the standpoint of the Governmental authorities a Park with 10 acres has the same impact than a Park with 100 acres.

I recommend that you complete the erection of the monument. Once that is substantially completed, we then file for a permit to build a visitor center or park. This visitor center project permit will then not interfere with erecting and completing the monument. At the time of substantial completion, the authorities will have a more positive view of the monument and they will all want to be part of the project success. Such change in attitude will save all of us millions of dollars.

If you do not want to use us and take advantage of our experiences I assure you will be trapped in quicksand. Allow us to guide you through the mine fields of Puerto Rico. We don't want to see you blown to pieces, lose millions or have this be converted into

another Cataño nightmare. You must tell your people not to take the slightest action that deviates from our November 2013 discussions without consulting and clearing with me or Alberto first. Otherwise, you risk the chance of having this project blown up.

G. *The Defendants' Breaches of the 2013 Agreement*

79. The Defendants breached the 2013 Agreement in material ways. **First**, they failed to place a lien of the highest priority on the relevant property, as agreed to in Paragraph 2.

80. **Second**, the Defendants failed to subdivide and transfer the property once the installation of the Monument was 75% complete, as agreed to in Paragraph 2. González was well aware when the Monument was 75% complete. To be sure, González attended a large event at the Monument celebrating this milestone, which was hosted and entirely paid for (including a caterer) by Tsereteli. González not only attended the event, but when he arrived and noticed the caterer was not using a rice product distributed by Pan American Grain (a González-owned company), he threatened BONWM's general manager, Vasili Tsereteli, that if the rice were not replaced with his company's rice, he would shut off the electricity to the premises, thereby shutting down the event.

81. **Third**, González demanded \$500 for each artisan on its payroll, without which González threatened to remove from his payroll all of the Russian workers necessary for installing the Monument. The Russian workers were heavy metal welders, skilled laborers of a degree unavailable in the local area (due to the nature of the construction). This demand for payment in lieu of removing them from the payroll was a breach of Paragraph 14 of the 2013 Agreement.

82. By June 2016, the installation of the Monument was all but complete, but for the visitors' center and parking lot, at the sole expense of Tsereteli. González has neither contributed any funds nor made any progress on constructing any other aspect of the Columbus Park Project since the permit studies conducted in the spring and summer of 2013.

83. On November 7, 2018, Tsereteli's attorney notified González that he was in breach of the 2013 Agreement.

84. González's failure to encumber and transfer the agreed upon property places Tsereteli's investment, including the value and cost of installing the Monument, in substantial jeopardy of generating colossal and inequitable losses. González, on the other hand, faces a windfall from the greatly increased value of his property, including the current ownership of land on which the Monument stands and that has otherwise been earmarked for a proposed visitors' center and proposed parking lot, *all at no cost to himself*. Defendants' course of action has demonstrated fraudulent intent.

85. On March 6, 2019, the parties attempted to mediate this dispute before a mediator provided by AAA, Salvador Antonetti-Zequeira. The Plaintiffs sought the transfer of land as agreed to under the 2013 Agreement. That mediation was unsuccessful.

86. This Action is the Plaintiffs' only recourse.

CAUSES OF ACTION

COUNT I

Breach of Contract and Demand for Specific Performance

87. The Plaintiffs hereby incorporate by reference the allegations contained in Paragraphs 1 through 86.

88. The 2013 Agreement, along with all correspondence and agreements preceding the 2013 Agreement, obligated the Defendants, González in particular, to, *inter alia*: (a) place a lien of the highest priority on the property immediately upon execution of the agreement; (b) upon 75% completion of the Monument, to “sub-divide its property at its sole cost and expense” and then transfer in fee simple the land necessary for the Monument, visitors’ center, and parking lot “for \$1.00 outright to BONWM, or its designee”; and (c) to “take all actions reasonably necessary to perform this Agreement in an economical and timely manner.”

89. The Plaintiffs performed under the 2013 Agreement, along with all correspondence and agreements preceding the 2013 Agreement, by installing the Monument *at their sole expense*. At all relevant times, the Plaintiffs were not in breach of the 2013 Agreement.

90. For their part, the Defendants breached the 2013 Agreement, along with all correspondence and agreements preceding the 2013 Agreement, by, *inter alia*: (a) failing to place a lien on the property after the 2013 Agreement was executed; (b) failing to subdivide and transfer the property necessary for the Monument, visitors’ center, and parking lot once the installation of the Monument was 75% complete; (c) failing to cover the

payroll expense for the Russian artisans; and (d) failing to take actions reasonably necessary to perform under the 2013 Agreement, including, but not limited to, evading correspondence, demanding undue payments to keep necessary employees on the payroll, and preventing the proper identification of the property subject to the agreement, although admittedly already identified and agreed to.

91. As a result of the Defendants breaches, the Plaintiffs have been and continue to be injured.

92. The Plaintiffs' interest in the Monument, including the value and cost of installation, faces substantial risk.

93. Pursuant to Article 1077 of the Civil Code, the Plaintiffs demand specific performance in the form of a transfer of the subject property to the Plaintiffs in order to protect against imminent and catastrophic losses.

94. The Plaintiffs also seek damages under Article 1077 of the Civil Code for (i) the costs expended to install the Monument, (ii) lost profits resulting from the Plaintiffs inability to sell commercial goods until a parking lot and visitors' center are constructed, thereby allowing for the Monument to be made available to the public, and (iii) any additional damages available under Puerto Rico Law. Indeed, pursuant to Article 1060 of the Civil Code, since Defendants' conduct demonstrates a pattern of fraud, Defendants are "liable for all those [damages] which clearly may originate from the nonfulfillment of the obligation," which, according to Article 1059 of the Civil Code, "includes not only the amount of the loss which may have been suffered, but also that of the profit which the creditor may have failed to realize."

COUNT II

**Breach of Implied Covenant of Good Faith and Fair Dealing
(In the Alternative to Count I)**

95. The Plaintiffs hereby incorporate by reference the allegations contained in Paragraphs 1 through 86.

96. Pursuant to Article 1210 of the Civil Code, “[c]ontracts are perfected by mere consent, and from that time they are binding, not only with regard to the fulfillment of what has been expressly stipulated, but also with regard to all the consequences which, according to their character, are in accordance with good faith, use, and law.” This Article creates a requirement of good faith and fair dealing in every obligation arising under a contract.

97. The covenant of good faith and fair dealing is implied in every contractual obligation by Article 1210 of the Civil Code, pursuant to which neither party to a contract shall do anything that has the effect of destroying or injuring the right of the other party or intended third-party beneficiary to receive the benefits of the contract.

98. The 2013 Agreement provided that the Plaintiffs would install the Monument—which the Defendants promoted as the anchor attraction of the proposed Columbus Park Project—and the Defendants would transfer property necessary to protect the Plaintiffs’ interest in the Monument, as well as a corresponding visitors’ center and parking lot.

99. The Defendants failed to properly identify the land agreed to for the installation of the Monument and construction of the visitors’ center and parking lot, failed to place a lien on the property upon execution of the 2013 Agreement, and failed to transfer the

property as required by the 2013 Agreement, all being necessary to protect the interest of the Plaintiffs in the Monument, visitors' center, and parking lot.

100. The Defendants actions have directly injured and threaten to destroy the Plaintiffs' interest in the Monument under the 2013 Agreement. As such, the Defendants have violated their duty of good faith under Article 1210 of the Civil Code.

101. The Plaintiffs' interests in the Monument, including the value and cost of installation, face substantial risks.

102. The Plaintiffs demand specific performance in the form of a transfer of the subject property to the Plaintiffs in order to protect against imminent and catastrophic losses. There is no adequate remedy at law.

103. The Plaintiffs also seek damages under Article 1077 of the Civil Code for (i) the costs expended to install the Monument, (ii) lost profits resulting from the Plaintiffs inability to sell commercial goods until a parking lot and visitors' center are constructed, thereby allowing for the Monument to be made available to the public, and (iii) any additional damages available under Puerto Rico Law. Indeed, pursuant to Article 1060 of the Civil Code, since Defendants' conduct demonstrates a pattern of fraud, Defendants are "liable for all those [damages] which clearly may originate from the nonfulfillment of the obligation," which, according to Article 1059 of the Civil Code, "includes not only the amount of the loss which may have been suffered, but also that of the profit which the creditor may have failed to realize."

COUNT III
Fraudulent Inducement

104. The Plaintiffs hereby incorporate by reference the allegations contained in each of the foregoing paragraphs.

105. The Defendants knowingly misrepresented and omitted material facts to persuade the Plaintiffs, who relied on those misrepresentations and omissions, to enter into an agreement they would not have otherwise agreed to had they known the truth.

106. The Defendants continuously made the following misrepresentations to the Plaintiffs:

- a. The Defendants intended to implement the Columbus Park Project proposal, the anchor of which was the Monument;
- b. The Defendants would pay for the installation of the Monument;
- c. The Defendants would place a lien on the agreed upon property to protect the Plaintiffs' investment in the Monument, visitors' center, and parking lot, and subsequently transfer the property in fee simple to the Plaintiffs. These actions were necessary for the Plaintiffs to protect their interests in the Monument, which is worth tens of millions of dollars.

107. Each of the above-referenced representations were material, relied upon by the Plaintiffs in deciding to install the Monument in Arecibo, Puerto Rico, and were intended to persuade the Plaintiffs to enter into an agreement with the Defendants.

108. However, the Defendants knew they would not proceed with the Columbus Park Project unless financed by Tsereteli (who stated he was not interested). As of the date of

this Complaint, the only aspect of the Columbus Park Project that has been commenced is the installation of the Monument. The Defendants have not developed any other aspect of the Columbus Park Project.

109. The Defendants also knew they would not cover the cost of installing the Monument, and thus waited until the Plaintiffs had no other choice but to install the Monument at their sole expense, and then repudiated all agreements previously made about paying for the cost of installation, which totaled millions of dollars.

110. Finally, the Defendants knew they would not file a lien or convey the property, which is necessary to protect the Plaintiffs' interest in the Monument. The Defendants are, for all practical purposes, attempting to misappropriate the Monument.

111. Had the Plaintiffs known the truth, they would not have entered into an agreement with the Defendants to install the Monument. The Defendants' fraudulent intent violates Article 1258 of the Civil Code and requires that the Defendants be ordered to perform their obligations under the Contract.

112. The Plaintiffs' interest in the Monument, including the value and cost of installation, face substantial risks.

113. The Plaintiffs demand specific performance in the form of a transfer of the subject property to the Plaintiffs to protect against imminent and catastrophic losses.

114. Additionally, the Plaintiffs seek damages for the costs expended to install the Monument, as well as lost profits resulting from the Plaintiffs inability to sell commercial goods until a parking lot and visitors' center are constructed, thereby allowing for the Monument to be made available to the public. Indeed, pursuant to Article 1060 of the

Civil Code, since Defendants' conduct demonstrates a pattern of fraud, Defendants are "liable for all those [damages] which clearly may originate from the nonfulfillment of the obligation," which, according to Article 1059 of the Civil Code, "includes not only the amount of the loss which may have been suffered, but also that of the profit which the creditor may have failed to realize."

COUNT IV
Unjust Enrichment
(In the Alternative to the Contract Claims)

115. The Plaintiffs hereby incorporate by reference the allegations contained in Paragraphs 1 through 85.

116. The Plaintiffs have conferred a benefit upon the Defendants by installing, at the Plaintiffs' sole expense, the Monument, worth tens of millions of dollars, on González's property.

117. The Defendants—Defendant González in particular—stand to receive a windfall as a result of their actions in luring the Plaintiffs into installing the Monument on Defendant González's property at the Plaintiffs' sole expense.

118. Absent relief from this Court, the Defendants will be unjustly enriched to the Plaintiffs' detriment.

119. The Plaintiffs' interest in the Monument faces substantial risks and equity requires specific performance in the form of a transfer of the subject property to the Plaintiffs in order to protect against imminent and catastrophic losses. There is no adequate remedy at law.

120. In the alternative, equity and good conscience demand the Plaintiffs recover from the Defendants the full value of the Monument and cost of installation.

COUNT V
Culpa in Contrahendo
(In the Alternative to the Contract Claims)

121. The Plaintiffs hereby incorporate by reference the allegations contained in Paragraphs 1 through 85.

122. The Defendants made clear and unambiguous promises that the Plaintiffs reasonably and foreseeably relied upon, resulting in the Plaintiffs injury.

123. The Defendants promised to implement the Columbus Park Project proposal (the anchor of which was the Monument), pay for the installation of the Monument, place a lien on the property to protect the Plaintiffs' interest in the Monument, visitors' center and parking lot, and to subsequently transfer the property in fee simple to the Plaintiffs after the installation of the Monument was 75% complete.

124. The Defendants defaulted on each of these promises – having failed to implement any portion of the Columbus Park Project proposal, to pay for the installation of the Monument, or to place a lien on the property or partition and convey it after the Monument was 75% installed.

125. The Plaintiffs reasonably and foreseeably relied upon the Defendants' promises and installed the Monument.

126. As a direct and proximate result of the Plaintiffs reliance on the Defendants' abandoned promises, the Plaintiffs have been injured and are entitled to damages.

127. Plaintiffs' reliance on Defendants' promises and Defendants' bad faith constitute *culpa in contrahendo* under Article 1802 of the Civil Code and other applicable law and jurisprudence.

128. The Plaintiffs demand specific performance in the form of a transfer of the subject property to the Plaintiffs to protect against imminent and catastrophic losses.

129. In addition, the Plaintiffs seek damages for the costs expended to install the Monument, as well as lost profits resulting from the Plaintiffs inability to sell commercial goods until a parking lot and visitors' center are constructed, thereby allowing for the Monument to be made available to the public.

130. In the alternative, the Plaintiffs demand recovery of the full value of the Monument and cost of installation.

COUNT VI
Fraud

131. The Plaintiffs hereby incorporate by reference the allegations contained in each of the foregoing paragraphs.

132. The Defendants knowingly made false statements to the Plaintiffs with the intent to deceive them into installing the Monument on Defendant González's property in Arecibo, Puerto Rico. The Plaintiffs reasonably relied upon those statements and constructed the Monument, directly causing the Plaintiffs to suffer injuries.

133. The Defendants knowingly made the following false statements:

a. The Columbus Park Project proposal would be implemented, the anchor of which was the Monument, knowing such would not occur unless funded by Tsereteli, who had already stated he was not interested;

b. The Defendants would pay for the installation of the Monument, knowing they would not;

c. The Defendants would immediately place a lien on the agreed upon property to protect the Plaintiffs' investment in the Monument, visitors' center, and parking lot, and subsequently transfer the property in fee simple to the Plaintiffs. These actions were necessary for the Plaintiffs to protect their interests in the Monument, which is worth tens of millions of dollars. The Defendants knew they would not encumber or transfer the subject property.

134. The Defendants intended these statements to cause the Plaintiffs to install the Monument and cover the cost of construction and installation, or risk losing all of their investment already made and never constructing the Monument.

135. The Plaintiffs reasonably relied upon the Defendants statements and installed the Monument. Under Article 1802 of the Civil Code, Plaintiffs' reliance on Defendants' statements constitute the tort of fraud.

136. The Plaintiffs demand specific performance in the form of a transfer of the subject property to the Plaintiffs to protect against imminent and catastrophic losses. There is no adequate remedy at law.

137. In addition, the Plaintiffs seek damages for the costs expended to install the Monument, as well as lost profits resulting from the Plaintiffs inability to sell commercial

goods until a parking lot and visitors' center are constructed, thereby allowing for the Monument to be made available to the public.

138. In the alternative, the Plaintiffs demand recovery of the full value of the Monument and cost of installation.

COUNT VII
Right of Accession
(In the Alternative to the Contract Claims)

139. The Plaintiffs hereby incorporate by reference the allegations contained in Paragraphs 1 through 85.

140. Plaintiffs relied in good faith on the Defendants' statements, authorization, actions, and conduct to erect the Monument on land belonging to Defendants. At all times, Plaintiffs were authorized to erect the Monument on the subject property.

141. Article 297 of the Puerto Rico Civil Code allows for good-faith builders in another person's land to either receive from the owner "the cost of the materials and labor, or the cost of reproducing the work at the time the owner of the land exercises his right, deducting depreciation, whichever is greater," or to have "the person who constructed [in another person's land] to pay the value of the land [and thus acquire it]."

142. The Plaintiff's demand, in the alternative to their contractual and extra-contractual claims, that Defendants' either pay Plaintiffs the full value of the Monument and the cost of installation, or that the Court determine the fair value of the land without the Monument so that Plaintiffs can acquire it.

COUNT VIII
Declaratory Judgment

143. The Plaintiffs hereby incorporate by reference the allegations contained in Paragraphs 1 through 85.

144. The Plaintiffs are entitled to a declaratory judgment under 28 U.S.C. § 2201, “whether or not further relief is or could be sought.”

145. The Plaintiffs seek a declaration of their legal rights under the 2013 Agreement. Specifically, the Plaintiffs seek a declaration that the Defendants are required to convey the land necessary to protect the Plaintiffs’ interest in the Monument, visitors’ center, and parking lot.

146. The Plaintiffs will prove at trial what portion of the Defendants’ property must be partitioned and conveyed to the Plaintiffs to protect their interest in the Monument, visitors’ center, and parking lot under the 2013 Agreement.

147. The Plaintiffs face a substantial risk of extraordinary losses absent a declaration by this Court.

COUNT IX
Cautionary Notice

148. The Plaintiffs hereby incorporate by reference the allegations contained in Paragraphs 1 through 85.

149. This litigation arises under a dispute as to the ownership of the subject property under the 2013 Agreement.

150. Plaintiffs request a provisional remedy in the form of an order from this Court to the Property Registry of Puerto Rico, Section Arecibo I, that the Registrar enter a

Cautionary Notice for said property under Article 44 of the Mortgage Law of Puerto Rico, Law 210-2015, as amended.

151. The Plaintiffs will prove at trial what portion of the Defendants' property must be partitioned and conveyed to the Plaintiffs to protect their interest in the Monument, visitors' center, and parking lot under the 2013 Agreement.

152. The Plaintiffs face a substantial risk of extraordinary losses absent a declaration by this Court.

PRAYER FOR RELIEF

The Plaintiffs prays for relief as follows:

- A. Finding the Defendants liable for breaching the 2013 Agreement, along with all correspondence and agreements preceding the 2013 Agreement, or, in the alternative, breached the implied covenant of good faith and fair dealing incorporated therein;
- B. Finding the Defendants liable for fraudulent inducement;
- C. In the alternative to finding liability under the contract claims, finding the Defendants liable for unjust enrichment or promissory estoppel;
- D. Finding the Defendants liable for fraud;
- E. Awarding the Plaintiffs equitable relief, including specific performance;
- F. Awarding the Plaintiffs damages, including the value of the Monument and the cost of installing the Monument, but, in any event, of no less than \$1 million;
- G. Awarding Plaintiffs the land or the cost of reproducing the work under the Right of Accession;
- H. Awarding the Plaintiffs a declaratory judgment as requested herein;

I. Granting the Plaintiffs the costs of prosecuting this action, including reasonable attorneys' fees; and

J. Granting any such other relief as this Court may deem just and proper under the circumstances.

TRIAL BY JURY IS DEMANDED

RESPECTFULLY SUBMITTED in San Juan, Puerto Rico on March 14, 2019.

I HEREBY CERTIFY that on March 14, 2019 I presented the foregoing to the Clerk of the Court for filing and uploading to the CM/ECF system.

DATED: March 14, 2019

/s/ Carlos E. López López
/s/ Luis Balbino Arroyo Colón

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