

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

CECORT REALTY DEVELOPMENT, INC. Plaintiff v. HONORABLE ISABEL LLOMPART ZENO, individually and in her official capacity as Administrative Director of the Puerto Rico Courts Administration Office. Defendant	Civil Action No.: Civil Rights Violations: Injunctive Relief
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VERIFIED COMPLAINT

TO THE HONORABLE COURT:

Comes now plaintiff Cecort RealtyDevelopment, Inc., through its undersigned counsel, and respectfully alleges and prays:

I THE PARTIES

1. Plaintiff, Cecort Realty Development, Inc., is a corporation duly organized and existing under the laws of the Commonwealth of Puerto Rico, having its principal place of business in San Juan, Puerto Rico.

2. Defendant Isabel Llompart Zeno, is the Administrative Director of the Puerto Rico Office of Courts Administration (hereinafter "OCA"). The Constitution of the Commonwealth of Puerto Rico bestows on the Chief Justice of the Puerto Rico Supreme Court the power to administer the unified judicial system and provides for the appointment of an administrative director. P.R. Const. art. V, § 7. The OCA is the administrative instrumentality that assists the

Chief Justice in the administration of the General Court of Justice of Puerto Rico. P.R. Laws Ann. tit. 4, §24n. In that capacity it provides for judicial facilities, recommends to the Chief Justice the assignment of judges to the different venues throughout the Island, evaluates and maintains data on their performance, and investigates and processes disciplinary complaints involving allegations of judicial misconduct. By virtue of Administrative Order Number OA-JP-2009-108 issued by the Chief Justice of the Supreme Court of Puerto Rico on May 18, 2009, among other functions the OCA also evaluates all employees of the Courts of the Commonwealth of Puerto Rico, establishes procedures for their recruitment, classification, retention, training, licenses and benefits, maintains the accounting and property records of the judicial branch, submits requests for special legislative assignments, advises the Legislature regarding the use of funds received for the functioning of the judicial system, and makes recommendations to the Chief Justice in accordance with criteria that it establishes regarding the transfer of judges, the assignment of judges to deal with special matters and to administer the judicial regions or the Court of Appeals, and takes the measures ordered by the Chief Justice for the better use of judicial resources.

II JURISDICTION AND VENUE

3. This action is brought pursuant to 42 U.S.C §1983 and §1988 and the Fifth and/or the Fourteenth Amendment to the Constitution of the United States. This Court has jurisdiction over Plaintiff's claim under 28 U.S.C. §1331, §1343(3), §2201 and §2202. Venue is proper in this court under 28 U.S.C. §1391(b) because Defendant resides in this district and because the acts complained of occurred in this district.

III. INTRODUCTION

4. This case is unique. It requires the intervention of this Federal Court because the Commonwealth Court System is incapable of providing Plaintiff with an adequate remedy at law. No adequate remedy can be obtained in the Commonwealth Courts because this case pits the Plaintiff squarely against the Administration of the Commonwealth Judiciary. The Defendant is the Administrative Director of the OCA, which in turn administers the Commonwealth Judiciary. Her actions complained of herein with respect to Plaintiff, taken under color of state law, are so stunningly arbitrary and capricious that they are depriving and will deprive Plaintiff of its property interests protected by the U.S. Constitution unless this Court intervenes. Because of the OCA's overarching role as supervisor, administrator and evaluator of the Commonwealth Judicial System, the courts of Puerto Rico are imbued with a degree of institutional bias that renders them incapable of impartially adjudicating the Plaintiff's claims. Moreover, the Commonwealth Supreme Court has publicly and openly prejudged the fundamental facts at the heart of this case. For these and other reasons more fully set forth in this complaint, it is only in this Court that the Plaintiff can be assured that its dispute with the Administration of the Commonwealth Judiciary will be fairly and impartially adjudicated, in accordance with the most fundamental principles of due process of law.

The essential facts are as follows: More than ten years ago, Plaintiff constructed two custom-made buildings for the OCA, specially designed to meet the needs of the Commonwealth Judiciary, at a cost of more than \$80 million, to house the Court of Appeals ("the CA building") and the offices of the OCA (the "OCA building"). The Plaintiff and the OCA entered into a unique type of Lease Agreement leasing both buildings to the OCA for a total term of 30 years.

The Lease Agreement does not provide for the unilateral cancellation of the leases by the OCA prior to the expiration of their respective terms.

Defendant now arbitrarily and capriciously demands, under a vague unconstitutional Commonwealth statute, as applied here, that plaintiff pay back to the OCA a portion of the rent that it received during the past ten years, based on a two-year old report by the Commonwealth Comptroller's Office, which deemed the rent "excessive." This demand is stunning and outrageous because the Report was previously vigorously contested and criticized by the OCA.

Further, motivated by this Report, which it forcefully challenged, Defendant, fully aware that her actions will cause Plaintiff irreparable damages, has unilaterally and arbitrarily purported to cancel the leases, despite the fact that both leases have not yet expired and there is no cause for termination of the leases. Defendant simply announced that it had leased a new building from a government entity to house the CA and its own offices, and abruptly cancelled the leases and terminated its negotiations entered into in good faith by Plaintiff to reduce future rent. Moreover, Defendant has ceased paying the current rent in full, while it continues to enjoy the use of the facilities

All of the Defendant's actions complained of herein, taken in her official capacity as the Administrative Director of the OCA and under color of state law, are so stunningly arbitrary and capricious that they shock the conscience. Defendant's actions manifest a reckless disregard for the Rule of Law insofar as they are premised on a misguided belief that the Commonwealth government may simply walk away from a valid and binding contract to which it is a party whenever a public official determines that the consideration that the government is bound to pay under the contract is "excessive" and hence against the "public order" (whatever that vague and

ambiguous term may mean). Such actions violate the Plaintiff's substantive due process rights under the federal constitution.

The defendant's unconstitutional actions are causing defendant great and irreparable damage. The defendant's unjustified cancellation of the leases, failure to pay rent, and demand for reimbursement of past rent paid will result in the Plaintiff being unable to service the debt it undertook in order to finance the construction of the buildings, and drive it into bankruptcy.

Plaintiff will find no redress in the Commonwealth courts, not only because the Administrator of the Commonwealth Judiciary is the Defendant, but also because a majority of the Puerto Rico Supreme Court has strongly and publicly accepted at face value the Comptroller's conclusion that the rent is "excessive", characterizing it as "alarming" in a proceeding to which the Plaintiff was not a party. For these unique and compelling reasons, Plaintiff's sole recourse is to this Honorable Court.

IV. FACTS

5. On April 14, 2000, Cecort Properties and Services Corporation ("Cecort Properties"), an affiliate of Plaintiff, and the OCA, entered into a lease agreement (the "Lease Agreement"), pursuant to certain preliminary agreements previously entered into between Cecort Properties and the OCA. Under the terms of the Lease Agreement, Cecort Properties agreed to build and lease to the OCA the CA building having an area of 95,602 square feet and 306 parking spaces to house the Puerto Rico Court of Appeals, and the OCA building, having an area of 146,506 square feet and 402 parking spaces to house the offices of OCA. The Lease Agreement was drafted by the OCA.

6. The Lease Agreement provides for a thirty (30) year term lease for each building divided in each case into three ten-year periods: the initial 10-year period, the first additional 10-year

period, and the second additional 10-year period. The 30-year term of each lease commences the day on which the OCA accepts delivery of the respective building from Plaintiff. After the initial 10-year period, the Lease Agreement grants the OCA a right of extension of each lease for two additional 10-year periods, under the same terms and conditions applicable to the then current period, but with a 15% increase in the rent for the first additional 10 year period, and an 8% increase for the second additional 10 year period.

7. The Lease Agreement grants to the OCA a right of extension (*derecho a prórroga* in Spanish). The contours of the right of extension granted to a lessee by a lease agreement have been defined by the Puerto Rico Supreme Court in *Atocha Thom McAN v Registrador*, 123 D.P.R. 571 (1989). When a right of extension is granted to the lessee, the lessor is obligated to lease the property for the full term of the lease, including its extensions, but the lessor's obligation to lease for the full term is subject to the resolatory condition that the lessee cancel the lease, thereby renouncing his right of extension. If the lessee does not cancel the lease, it continues in effect for the full term.

8. In this case, the full term of each lease is 30 years, which means the Plaintiff is obligated to lease both properties to the OCA for the full 30-year term. The OCA has the right to cancel each 30-year lease, and thereby renounce its right of extension under the Lease Agreement, as of the end of the initial 10-year period of the term, and if not cancelled then, as of the the end of the second 10-year period of the 30-year term. Under the express terms of the Lease Agreement, in order to cancel each lease prior to the expiration of its 30-year term, the OCA must notify Plaintiff, at least 360 days before the expiration of the current 10-year period, that it has elected not to extend the term, thereby

renouncing its right of extension and cancelling the lease. If such notice is not timely given the lease continues in effect for its full 30-year term.

9. The Lease Agreement, drafted by the OCA, does not have a default clause explicitly giving the OCA the right to cancel the 30-year leases prior to expiration of the current term at any time for whatever cause. Under Article 1077 of the Civil Code of Puerto Rico (31 LPRR § 3052), which by law supplements the contract, a party may terminate the agreement upon default by the other party of an essential obligation of the agreement. Therefore, Defendant in this case cannot cancel the leases, unless Plaintiff fails to fulfill an essential obligation of the contract.

10. The monthly rent payable under the Lease Agreement for the CA Building is the amount of \$422,603 and for the OAT Building, \$585,596. The rent includes what are commonly known as common area charges (CAM). Plaintiff has a continuing obligation under the Lease Agreement, at its own cost and expense, to repair the buildings (which includes maintaining it in conditions required for its use, ordinary wear and tear not excepted, and replacing all equipment necessary for such purposes), and to maintain in excellent state all mechanical, electric and hydraulic equipment and systems of the buildings (which include plumbing, generators, security cameras, elevators, parking and access controls). It is required to maintain a service office in the buildings properly staffed to coordinate and make such repairs and maintenance. (Sections 11.1 and 11.4 of the Lease Agreement.)

11. The site selected for the construction of the buildings is located at Cesar González Avenue, a block away from Piñero Avenue in Hato Rey, Puerto Rico. The site was approved by the OCA due to its proximity to the San Juan Judicial Center as well as Las Américas Expressway and Piñero Avenue which provide easy access and egress to the facilities. The

buildings were to be built in adjoining lots, each building would be self-sufficient, would function separately from the other and would have its own parking facilities.

12. The Lease Agreement provides that the two buildings were to be built in strict compliance with the plans and specifications approved by the OCA. It further provides that the OCA could make changes to the plans and specifications of each of the buildings after construction commenced, at its own cost and expense. All change orders with respect to the changes requested by the OCA should be approved by the OCA's Inspection Office for the project and should be signed and authorized by the Director of the OCA or the person designated by her to approve said changes.

13. On June 29, 2001 Cecort Properties transferred title of the site where the project was to be constructed to Plaintiff, and assigned to Plaintiff all of its rights and obligations under the Lease Agreement. The OCA consented to said assignment to, and assumption of obligations by, Plaintiff.

14. On the same date, Plaintiff entered into a construction loan agreement with Banco Bilbao Vizcaya Argentaria Puerto Rico in the principal amount of \$32,000,000 to finance the construction of the CA Building. Said loan was secured by a mortgage on the CA Building and an assignment of the rent to the bank.

15. Also on that same date, Plaintiff entered into another loan agreement with the same bank in the principal amount of \$4,268,000 to finance the acquisition from Cecort Properties of the parcel of land where the OCA Building was to be constructed.

16. On October 18, 2002, Plaintiff entered into a second construction loan agreement with Bank of Nova Scotia in the principal amount of \$46,000,000 to finance the

construction of the OCA Building. Said loan was secured by a mortgage on the OCA Building and an assignment of the rent to the bank.

17. The OCA accepted delivery of the CA Building on July 14, 2003. It has occupied said building since then, and up until the present time, and has paid the monthly rent from such date, as provided in the Lease Agreement, except for the 15% increase in rent payable after July 14, 2013 and the rent for the last three months which has only been partially paid.

18. The OCA did not timely notify Plaintiff that it was waiving its right to cancel the 30-year lease for the CA Building, 360 days before July 14, 2013 (the tenth anniversary of the date on which OCA accepted delivery of the CA Building). The notice to that effect was received two years late, on June 30, 2014. The term of CA Building lease was, therefore, not cancelled and continues in effect for the full 30-year term unless cancelled as of July 14, 2023, in accordance with the Lease Agreement. The OCA has failed to pay Plaintiff the 15% increase amount in rent for the CA Building, as provided in the Lease Agreement.

19. The OCA accepted delivery of the OCA Building on June 1, 2005. It has occupied said building since then, and up until the present time, and has paid the monthly rent agreed upon in the Lease Agreement from such date, except the rent for the last three months which has not been paid in full.

20. As in the case of the CA Building, the OCA failed to timely notify Plaintiff that it was waiving its right to cancel the 30 year lease for the OCA Building, 360 days before June 1, 2015 (the tenth anniversary of the date on which OCA accepted the OCA Building). Such notice was received by Plaintiff June 30, 2014. It should have been received on or before June 6, 2014. The OCA Building lease was, therefore, not cancelled and continues in effect for the full 30 year term unless cancelled as of June 1, 2025, in accordance with the Lease Agreement.

21. During construction of the OCA Building, the OCA requested certain changes to the plans and specifications and, as a result, Plaintiff incurred additional costs in the amount of \$1,416,576, which included architect's fees, an increase in the cost of the construction and additional interests on the construction loan due to the delay such changes would bring about in the completion of the construction of the OCA Building. Even though the changes made to the OCA Building were required by the OCA, and the additional cost of such changes was approved by the OCA, the OCA has refused, without any justification whatsoever, to reimburse Plaintiff such additional costs, as it is obligated to do under the Lease Agreement, notwithstanding Plaintiff's demands for payment made since 2005.

22. On March 19, 2012, the Comptroller of Puerto Rico issued a report (hereinafter the "Comptroller's Report") of its audit of the OCA's accounts, concluding, among other things, that the rent provided for in the Lease Agreement was "excessive" and that the OCA should re-negotiate a reduction of the rent payable under the Lease Agreement. The Comptroller, however, has no authority to modify or alter government contracts and there is no rent control law in Puerto Rico bearing on those contracts. The Comptroller's Report mentioned the case of *De Jesús v. Autoridad de Carreteras*, 148 D.P.R. 255 (1999), which cautions government agencies as to the scrupulous use of public funds in government contracts.

23. Prior to the issuance of the Comptroller's Report, the OCA, based on the draft of the report that the Comptroller had provided to the OCA, filed with the Comptroller its well-reasoned objections to the Comptroller's conclusion that the rent agreed upon in the Lease Agreement is "excessive", and clearly demonstrated that the rent agreed upon in the Lease Agreement is reasonable. The OCA stated that the market value of the rent agreed upon in the Lease Agreement cannot be determined by comparing it to the rent payable in other office

buildings not destined for judicial use, as is the case with the two buildings here, which is what the appraiser employed by the Comptroller did. The OCA cited the U.S. Courts Design Guide to the effect that: “[t]he cost of constructing standard federal court office buildings is typically higher than the cost of constructing standard office buildings, due to the courts’ special requirements, such as security and specialized spaces, such as courtrooms.” The OCA added that the appraiser failed to take into account the rent paid by the OCA for the Humacao and Fajardo Judicial Centers, the reasonableness of which were not questioned by the Comptroller, and which are comparable to the rent being paid for the CA Building and the OCA Building under the Lease Agreement. Further, the OCA rightly explained that the market value of the land in Hato Rey on which these two buildings are constructed is much higher than the market value of the land in Fajardo and Humacao on which the other judicial centers are constructed. The OCA also added that the appraiser failed to take into account that Plaintiff pays for the maintenance and repairs of the mechanical and electrical equipment of the buildings and 25% of the property taxes, and that the OCA does not charge its employees for the use of the parking spaces, as do the owners of the typical office buildings.

24. The OCA concluded its objections to the findings in the draft of the Comptrollers Report with the following affirmations:

Our actions have been adjusted to the legal and regulatory requirements. We have been rigorous and diligent managing and administrating the public’s funds and arduous defenders of the public treasury.

The buildings that are the object of the present audit have been built to the entire satisfaction of the Judicial Branch and for years have been offering a service to the People. The interest of the Judicial Branch has been and is duly protected, as demonstrated by that, notwithstanding the years that have passed, it has not been possible to point out in the draft report any concrete adverse effect as to any of the matters presented.

25. In October of 2013, the OCA contacted Plaintiff to renegotiate a reduction in the amount of the future rent for the two buildings as recommended by the Comptroller's Report. At that time Plaintiff's claim for payment of the additional costs incurred in the construction of the OCA Building was pending. Plaintiff advised the OCA that it was willing to renegotiate a reduction in the future rent so long as OCA would negotiate the payment of Plaintiff's claim to recover the additional costs incurred in the construction of the OCA Building.

26. Plaintiff tried unsuccessfully with the OCA's counsel to commence negotiations. After almost two months elapsed without being able to contact the OCA's counsel, on January 14, 2014, Plaintiff filed a complaint in the local courts against the OCA. In the complaint, Plaintiff claimed payment from the OCA in the amount of \$1,406,576.00 for the additional costs incurred in the construction of the OCA Building, and payment of the 15% increase in rent for the first additional 10-year period of the 30-year term of the CA Building lease, as provided in the Lease Agreement, which increase in rent was payable since July 14, 2013, the tenth anniversary of the date on which the OCA accepted the delivery of the CA Building.

27. The OCA filed a motion to dismiss both causes of action for failure to state a claim. With respect to the first cause of action, the OCA alleged that it had not approved the change order for the additional construction cost of the OCA Building. With respect to the second cause of action, the OCA alleged that the initial 10-year period of the CA Building had not expired and, in the alternative, if it had expired, that the OCA had not extended the term.

28. The court denied OCA's motion to dismiss the first cause of action of the complaint. It granted the OCA's motion to dismiss the second cause of action of the complaint and rendered a partial judgment dismissing Plaintiff's claim for the 15% additional rent payment for the CA Building.

29. The OCA's argument upon which it based its motion to dismiss the second cause of action of Plaintiff's complaint for payment of additional rent for the CA Building, was premised upon a tortured and disingenuous interpretation of the language of the Lease Agreement. The OCA contended that the initial 10-year period of the 30-year term of the lease of the CA Building had not expired, because the term of that lease should be counted, not from the date on which the OCA accepted delivery of that building, but from the date that it accepted the delivery of the OCA building, almost two years after it accepted delivery of the CA Building.

30. This argument, egregiously erroneous as a matter of fact and law, was nevertheless accepted by the Commonwealth Court of First Instance. The Court paid no attention to the fact that the CA Building was occupied two years before the OCA Building. It also ignored the fact that the OCA began paying rent for the CA Building as of July 14, 2003, when it accepted its delivery, almost two years before accepting delivery of the OCA Building. The court further ignored a letter from the Director of the OCA, dated May 24, 2001, clarifying the Lease Agreement to the effect that the lease for each building is separate from the lease of the other building, even though both leases are included in the same document. That being the case, it is undisputable that the 30-year term of the lease of the CA Building commenced on the same day that the OCA commenced paying rent, and therefore, the initial 10-year period of said lease expired on July 14, 2013. Such a blatant disregard of the facts and the law by the Commonwealth Court of First Instance is indicative both of its structural and actual bias against Plaintiff.

31. Plaintiff appealed the court's partial judgment. A decision is pending by the Puerto Rico Court of Appeals.

32. OCA also filed a counterclaim against Plaintiff alleging that the rent agreed upon in the Lease Agreement is "excessive". It seeks a declaration from the court that the agreement by

which it is obligated to pay the allegedly excessive rent is null and void, because it is against the public order (“orden público”) in accordance with the *De Jesús v. Autoridad de Carreteras*, 148 D.P.R. 255 (1999). It also seeks a court order requiring Plaintiff to reimburse the OCA the amount of the allegedly excessive rent paid to Plaintiff during the last ten (10) years.

33. The OCA’s contention that the rent agreed upon in the Lease Agreement is “excessive” is based on the same Comptroller’s Report, which the OCA had clearly refuted in its objections to the draft of the Report. (See Paragraph 22-24 of this Complaint, supra). This inexplicable flip-flop in Defendant’s position shocks the conscience. More so in light of *Asociación de Alcaldes v Contralor* 176 D.P.R. 150 (2009), in which the Supreme Court of Puerto Rico holds that the governmental department or agency audited by the office of the Comptroller is not obligated to follow the recommendations made by the Comptroller, and that the Comptroller does not have the authority to enforce such recommendations. The OCA, amazingly, also bases its contention that the rent is “excessive” upon an appraisal, a copy of which it attaches to the counterclaim, which explicitly states that date of valuation of the market rent determined with respect to the two buildings is January 15, 2013, thirteen (13) years after the Lease Agreement was entered into.

34. The Defendant’s imperious actions go beyond filing the frivolous counterclaim. It has also engaged in other heavy-handed litigation tactics. For example, the OCA has sought to deprive the Plaintiff of its monthly rent payments by attempting to deposit them in the Commonwealth Court. Thus, on November 6, 2014, the OCA filed a motion requesting that the court accept the deposit of the two October rent checks, one for \$585,596.00, corresponding to the rent payable for the OCA Building, and the other for \$422,603.00, corresponding to the rent payable for the CA Building. In its motion, the OCA further announced that it would continue

depositing the checks in payment of the monthly rent. The motion was filed under Puerto Rico Rule of Civil Procedure 35.3, the equivalent of Fed.R.Civ.P. 67, which applies only if something is claimed from the party seeking to make the deposit, and such party seeks to deposit what is claimed from it. Nothing is claimed from OCA in its counterclaim. The OCA's intent in filing the motion was to illegally obtain possession of funds that belong to Plaintiff and to deprive Plaintiff of the necessary funds to satisfy its obligations with its creditors. This motion, if successful, would have driven Plaintiff into bankruptcy by making impossible the payment of the mortgages that secure the construction loans for the buildings, and would thereby have caused Plaintiff irreparable damages.

35. In an effort to resolve the existing controversies, on December 10, 2014, Plaintiff's President and Plaintiff's counsel met with the Defendant and two of the OCA's attorneys. The Plaintiff apprised them that the failure to pay the monthly rent would prevent Plaintiff from being able to pay the monthly mortgage payments, and thereby cause a default, and that it would also prevent the Plaintiff from being able to provide the monthly maintenance and repair services that it was obliged to provide to both buildings under the Lease Agreement. Plaintiff indicated that it was willing to negotiate a reduction in future rent if Defendant withdrew the motion purporting to deposit in court the monthly rental checks. The Defendant insisted that the OCA would continue to deposit the rent checks with the court until the court ordered otherwise. The Defendant further insisted that the OCA had to comply with the Comptroller's Report and that the rent agreed upon under the Lease Agreement had to be reduced accordingly, or else the OCA would sign a new lease and vacate the buildings. She and her counsel took the position that the Plaintiff's contractual rights were subordinate to the OCA's economic needs and the

public interest. Notwithstanding, Defendant indicated that she would be open to considering an offer for reduction of the rent.

36. After the meeting with the Defendant and the OCA's attorneys, the Plaintiff's counsel received a telephone call from one of the OCA's lawyers who had been present at the meeting. They discussed the possibility of submitting a joint motion to the Commonwealth court requesting a prompt ruling on the issue of the rent checks deposited in court, but could not agree on suitable language. There was further discussion of the merits of the OCA's position with respect to depositing the rental checks in court. Plaintiff's counsel indicated that if the court allowed the OCA's position to prevail, in his opinion, such a ruling would cast doubt upon the Judge's impartiality, and he would then recommend to Plaintiff to bring its claim in Federal Court. The OCA's attorney indicated that the Defendant was not "bluffing" when she said that the OCA would sign a new lease and vacate the buildings if no agreement was reached with Plaintiff. Plaintiff's counsel asked her: what if the court decides in favor of Plaintiff and rules that the CA lease was not cancelled by OCA? The OCA's attorney responded: "There is no way that the Supreme Court is going to indemnify Cecort for breach of contract while the OCA is paying rent to another landlord." Plaintiff's counsel was astonished by this statement. The next day, however, Defendant's counsel called to inform that Defendant had agreed to withdraw the OCA's motion seeking to deposit the monthly rental checks in court.

37. On December 15, 2014 Plaintiff, by email to the OCA's counsel, offered to reduce the rent for both buildings by 24% and to settle its claim for \$1,406,576 by payment of \$1,000,000 in five consecutive annual installment of \$200,000 each, provided that the OCA would desist from its counterclaim with prejudice.

38. The following day, in a telephone conversation between Plaintiff's counsel and the OCA's counsel, the OCA's counsel stated that the offer made by Plaintiff was not acceptable to the Defendant. She indicated that the Defendant would not accept paying rent for the parking spaces in excess of \$125 a month per parking space and did not believe that she would accept a discount in the total rent of less than 26%.

39. On the same day, Plaintiff's counsel called the OCA's counsel to inform her that Plaintiff's president would like to meet personally with the Defendant to offer the OCA: (i) a 26% reduction in the rent being paid (from approximately \$12 million a year for both leases to approximately \$9 million a year), including \$125 per parking space per month; (ii) a reduction in the term of the lease to five years, instead of the ten year term extension contemplated in the Lease Agreement, and (iii) a voluntary dismissal with prejudice of its claim of \$1,406,576 for the additional costs incurred by Plaintiff in the construction of the OCA Building as a result of the changes required by OCA, and its claim for the payment of the additional rent with respect to the CA Building (See Paragraph 26 of this Complaint), provided that the OCA would desist with prejudice of its counterclaim.

40. On December 17, 2014, Plaintiff's counsel called the OCA's counsel to inquire the date and time of the meeting requested with Defendant, and was informed that the Defendant would discuss the offer directly with the Chief Justice so that the meeting with Plaintiff's President was not necessary. The next day, a press release informed that the Chief Justice had indicated that the OCA was in the midst of negotiations with the owner of the OCA Building and the CA Building for a rent reduction, and was hopeful that a favorable result would be obtained.

41. Between December 17, 2014 and January 16, 2014, counsel for Plaintiff called counsel for the OCA on at least two occasions to inquire whether the OCA had any response to the offer

made by Plaintiff. She stated that she had had no news. On January 16, 2014, counsel for the OCA called Plaintiff's counsel to inform him that OCA had signed a lease agreement with a government agency for a building in Hato Rey. On January 18, 2015, a press release was issued by the OCA informing that that the facilities of the CA and the OCA would be relocated from the existing buildings to a newly leased government building, supposedly representing a \$10 million savings to the OCA. It also indicated that the negotiations with Plaintiff had not been fruitful and that a lease agreement was entered into with a government entity, the Infrastructure Financing Authority or "Autoridad para el Financiamiento de la Infraestructura" (AFI), for a building in Hato Rey.

42. On January 21, 2015, counsel for Plaintiff wrote to the OCA's counsel to express Plaintiff's surprise and consternation upon being informed that the OCA had entered into a new lease, and requested, in good faith, information from the OCA as to how the alleged \$10 million annual savings had been determined. By letter dated January 30, 2014, the OCA's counsel responded that Plaintiff "had no right to know (injerencia) the decisions of public policy that the OCA determines to implement to achieve the savings that it understands that proceed and are necessary. Therefore, it is not necessary to explain the methodology to compute those savings."

43. By entering into a new lease agreement to house the CA and the offices of the OCA, the Defendant has, unilaterally, wrongfully and unconstitutionally cancelled the unexpired leases for both buildings. The Lease Agreement does not grant the OCA the right to cancel the leases prior to the expiration of their respective terms and there is no cause for an early termination of the leases. This action shall cause Plaintiff irreparable damages.

44. Both the CA Building and the OCA Building were specially designed and custom-built to satisfy the needs of the CA and of the OCA. The CA Building has specially designed offices for

thirty-three appellate judges, each with private bathrooms, specially designed office spaces for assistants, marshals and clerks, for conference rooms, for courtrooms and for filing and storage of documents, and were constructed with private elevators for judges and marshals. The OCA Building was specially designed for a specialized government office and its dependencies, and not for office or commercial spaces to be used by private parties. Both buildings have built-in security features not required by private parties for office or commercial use.

45. Thus, neither building may be used by private parties for office or commercial use unless the interiors of the buildings are reconstructed at a cost of millions of dollars. Neither building may be sold in its present condition at a price sufficient for Plaintiff to recover nowhere near the amounts it invested in the purchase of the land and the construction of the buildings. Plaintiff will not be able to lease the buildings to private parties for commercial and office use unless it undertakes the reconstruction of their interiors. Plaintiff does not have the resources or the financial capability to undertake the reconstruction of the interiors of both buildings that is required in order to lease them to private parties. As a result of the above, Plaintiff will not only be deprived of the future rent to which it is entitled under the Lease Agreement, but it will also be deprived of the value of the buildings as such and of the amounts invested in both buildings. As a result, a bankruptcy is inevitable. These damages are irreparable.

46. Although the Court of First Instance failed to deny the OCA's motion to deposit the rental checks outright, Plaintiff ultimately managed to convince the OCA to withdraw its frivolous motion and release the deposited checks to Plaintiff. However, since January, Defendant has resorted to withholding and/or making only partial rent payments to Plaintiff. For the month of January, 2015, the OCA made only a partial rent payment for the OCA building.

For the month of February, the OCA made only a partial payment for the CA building, and paid nothing for the OCA building.

47. Only about a half of the financing obtained by Plaintiff to purchase the land and construct the buildings, which is secured by mortgages on the buildings, has been paid. If Plaintiff does not receive the full monthly rent for both buildings (approximately \$1 million), it will not be able to pay the monthly installments of principal and interest and will default on its mortgages. The bank will then have the right to foreclose the mortgages.

V. PLAINTIFF'S CIVIL RIGHTS CLAIMS.

48. The Civil Rights Act, codified as 42 U.S.C. §1983, provides as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

49. The Defendant, acting under color of state law, intentionally, willfully and without any legal or rational basis, seeks to deprive Plaintiff of its property rights, protected by the U. S. Constitution, on the monies earned by its performance under the Lease Agreement, by demanding that Plaintiff pay back to the OCA millions of dollars for the allegedly "excessive" rent paid to Plaintiff by the OCA during the last ten years.

50. The Defendant, acting under the color of state law, intentionally, willfully and without any legal or rational basis, seeks to deprive Plaintiff of its property rights under the Lease Agreement, protected by the U. S. Constitution, by deciding to enter into a new lease to house

the CA and the offices of the OCA, and thereby unilaterally cancelling the unexpired leases under the Lease Agreement, without cause and in violation of their own express terms.

51. The Defendant's actions, above described, are so stunningly arbitrary and capricious that they shock the conscience, and have been taken in such an imperious and outrageously high-handed manner that they evince an utter lack of respect for the Rule of Law.

1. Plaintiff's first claim: Defendant's demand that Plaintiff pay back part of the rent earned by performance under the Lease Agreement violates Plaintiff's Fifth and/or Fourteenth Amendment due process rights under the U.S. Constitution.

52. Plaintiff incorporates by reference all the allegations made in the preceding paragraphs of this Complaint.

53. The Fourteenth and/or Fifth Amendments to the U.S. Constitution protect all persons, including corporations, from being deprived by the government of their property rights without due process of law.

54. The Plaintiff has a protected property right under the Fourteenth and/or Fifth Amendments to the U.S. Constitution with respect to the monies paid to it during the last ten years by the OCA for past rent that were earned by its performance under the Lease Agreement. Such monies constitute "property" for purposes of the due process clause because Plaintiff has a legitimate claim that entitles it to such monies due to its performance under the Lease Agreement.

55. The Defendant, acting under color of state law, demands that Plaintiff pay back a part of the rent earned by Plaintiff for its performance under the Lease Agreement, based on the Comptroller's Report, because according to the Comptroller's Report the rent agreed upon in the Lease Agreement is "excessive" (See Paragraphs 32-33 of this Complaint, supra).

56. By making such demand after the OCA has possessed, occupied and enjoyed the leased buildings during almost ten years, and paid the rent agreed upon under the Lease Agreement, defendant seeks to deprive Plaintiff of a property interest protected by the substantive aspect of the due process clause of the U.S. Constitution.

57. The demand that Plaintiff pay back the allegedly excessive amount of rent for the past 10 years is predicated, not on the provisions of the Lease Agreement, but on Article 1207 of the Civil Code 31 L.P.R.A. 3372 that prohibits contracts contrary to “the public order.” Defendant claims that this prohibition as defined by the Supreme Court of Puerto Rico in *De Jesús v. Autoridad de Carreteras*, 148 D.P.R. 255 (1999), annuls the excessive part of the rents paid and that Plaintiff is obligated to pay back this part of the rent.

58. It is a “fundamental principle in our legal system ... that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.” *FCC v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317 (2012). The concept of “public order”, as defined by the Supreme Court of Puerto Rico in *De Jesús* and applied to this case, is unconstitutional in that it does not give fair notice of what is prohibited.

59. The Supreme Court of Puerto Rico defines “public order” in *De Jesus, supra*, in a manner that is so unconstitutionally vague that persons of common intelligence guess at its meaning and differ as to its application, to wit:

- The public order “collects and protects a dominant social interest due to its transcendence, the number of persons affected and the value of the interests it intends to protect.”

- The public order is the “ruling principles of wise government born of civilization and strengthened by culture, customs, by the way of being, in the end, by the style of a society.”
- The public order is violated by “clauses that attempt against the equilibrium of contractual obligations, which constitute a basic premise of valid contracts.”
- The public order is violated by “clauses which provide unjustified advantages and are contrary to commutative justice”
- The “public order... includes in its content not only the prohibition against abusive or leonine clauses but also the public policy of constitutional origin that proclaims the scrupulous use of public funds.”

60. Persons of ordinary intelligence guess at the meaning of these passages and differ as to the application of the concept of “public order” in Art. 1207 of the Civil Code as explained by the Supreme Court of Puerto Rico in *De Jesús*. They guess and differ as to what is “a dominant interest due to its transcendence”, or the “principles of wise government born of civilization”, or the “style of a society”, or the “equilibrium of contractual obligations”, or “commutative justice”, or what is a “scrupulous use of public funds”.

61. The Defendant’s invocation of Article 1207 of the Civil Code, as purportedly applied here, to void the allegedly “excessive” part of the rent paid to Plaintiff, is unconstitutional and deprives Plaintiff of its property rights, because it is well settled that “a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.” *Connally v. Gen. Constr. Co.* 269 U.S. 385, 391 (1926)(citations omitted.) The application to Plaintiff of Art. 1207 of the Civil Code as defined by the Supreme Court in *De*

Jesús violates due process inasmuch as it does not give fair notice as to what is prohibited by the concept of “public order.”

62. Defendant’s unjustified demand that Plaintiff pay back to the OCA the allegedly excessive rent paid by the OCA to Plaintiff during the last ten years is so outrageous and contrary to the Rule of Law that it shocks the conscience.

63. Having previously refuted, in a clear and convincing way, the conclusion of the Comptroller’s Report that the rent agreed upon was “excessive”, Defendant now inexplicably and arbitrarily flip-flops its position and claims that the rent under the Lease Agreement is “excessive” because the Comptroller so concluded, and furthermore uses the judicial process of the Commonwealth to demand pay back of the alleged excessive rent paid during the past 10 years (See Paragraphs 22-24 and 32-33 of this Complaint, supra).

64. While previously labeling itself “rigorous and diligent” in managing the public funds, now Defendant outrageously claims, under *de Jesus*, that the payment of the allegedly excessive rent is against the public order because it constitutes an unscrupulous use of public funds by the OCA (See Paragraph 32 of this Complaint, supra). This claim by Defendant is truly outrageous in light of the following concluding remarks made by the OCA in its objections to the Comptroller’s Report:

Our actions have been adjusted to the legal and regulatory requirements. We have been rigorous and diligent managing and administrating the public’s funds and arduous defenders of the public treasury.

The buildings that are object of the present audit have been built to the entire satisfaction of the Judicial Branch and for years have been offering a service to the People. The interest of the Judicial Branch has been and is duly protected, as demonstrated by that, notwithstanding the years that have passed, it has not been possible to point out in the draft report any concrete adverse effect as to any of the matters presented.

2. Plaintiff's second claim: Defendant's unilateral termination of the Lease Agreement constitutes a deprivation of a protected property interest that violates Plaintiff's Fifth and/or Fourteenth Amendments due process rights under the U.S. Constitution.

65. Plaintiff incorporates by reference all of the allegations made in the preceding paragraphs of the this Complaint.

66. Plaintiff has a protected property interest under the Fifth and/or Fourteenth Amendments to the Constitution of the U.S. in that the Lease Agreement continue in effect for its full 30-year term and in being able to receive the rent payable thereunder.

67. Plaintiff has a legitimate claim of entitlement under the Lease Agreement to have the buildings leased to the OCA during the full 30-year term of the lease and to receive the future rent. Such contract rights, as well as the leased buildings as such, constitute "property" for purposes of the due process clause.

68. The wrongful cancellation of the lease by Defendant, acting under color of state law as the Administrative Director of the OCA, without cause, will deprive Plaintiff, not only of Plaintiff's property rights under the Lease Agreement, but also of the leased buildings' value, utility and marketability, thereby denying Plaintiff the benefits of its ownership of the leased buildings, all in violation of the Plaintiff's rights under the substantive component of the due process clause. The buildings were specially designed and custom-built to suit the unique needs of the judiciary and are unsuitable in their present condition for ordinary commercial and/or office use by private parties. (See Paragraphs 44-45 of this Complaint, supra).

69. The cancellation by Defendant of the leases of the CA Building and the OCA Building is wrongful and illegal. Neither of the leases has expired. The Defendant cannot cancel the leases prior to expiration of their respective terms and there is no cause to justify an early termination of the leases.

70. The CA Building lease was not cancelled as of July 14, 2013, or as of June 1, 2015 as Defendant contends (See Paragraphs 17-18 of this Complaint, supra). The term of that lease expires on July 14, 2033.

71. The OCA Building lease was not cancelled as of June 1, 2015 as Defendant contends (See Paragraphs 19-20 of this Complaint, supra). The term of that lease expires on June 1, 2035.

72. The Lease Agreement does not give the OCA the right, at all, to cancel the leases prior to their expiration for any reason whatsoever. The OCA cannot cancel the leases under article 1077 of the Civil Code of Puerto Rico because Plaintiff has not failed to fulfill any of its essential obligations under the Lease Agreement (See Paragraph 9 of this Complaint, supra) The reason given by Defendant to cancel the leases is not a default by Plaintiff but that the OCA will, allegedly, save \$10 million a year by leasing to the government the new facilities (See Paragraph 41 of this Complaint, supra).

73. Even assuming *arguendo* that both leases expire on May 31, 2015, as Defendant contends, which is clearly not the case, substantive due process prevents the government from acting under a cancellation provision of a contract to which it is a party unless it has a rational basis for its decision, exercises an honest judgment and acts in good faith. Defendant's decision to enter into a new lease agreement to house the CA and the offices of the OCA, and thereby cancel the leases, lacks a rational basis, is arbitrary and capricious, and was taken in bad faith.

74. Defendant's actions in cancelling the leases are so outrageous and unjustified under the Rule of Law as to shock the conscience.

75. Defendant's decision to reject Plaintiff's offer to make a substantial rent reduction (26%), without an explanation as to why Plaintiff's offer was not acceptable, or without making a counteroffer, and to simply enter into a new lease, thereby unilaterally purporting to cancel the

leases, is reckless, irrational, arbitrary, capricious and conscience shocking. (See Paragraphs 35-41 of this Complaint, supra).

76. Defendant's arbitrary and capricious decision in purporting to cancel the leases is conscience shocking because she must have, or should have, foreseen that her actions will drive Plaintiff into bankruptcy and potentially expose the government to liability for Plaintiff's claim for millions of dollars in damages for breach of contract. The damages will be substantial and irreparable because the unearned rent exceeds \$100 million and the leased buildings were specially built to suit the needs of the OCA, and cannot be put to other uses. Defendant's reckless and irrational decision is not the product of an honest judgment.

77. By causing the OCA to simply walk away from a valid and binding contract because it will allegedly save \$10 million a year in rent, the Defendant's actions manifest a reckless disregard for the Rule of Law and shock the conscience.

78. Defendant's heavy-handed litigation tactics in the local court are also indicative of lack of good faith and are conscience shocking. Defendant purported to deposit in court the checks in payment of the monthly rent for both buildings, and not pay Plaintiff the monthly rent, without any legal basis to justify such action (See Paragraph 34 of this Complaint, supra). Further, Defendant has caused the OCA to cease paying the full monthly rent since January of 2015.

3. Plaintiff's third claim: Defendant's demand that plaintiff pay back part of the rent earned by performance under the Lease Agreement, and Defendant's unilateral cancellation of the Lease Agreement constitute, in each case, a deprivation of a protected property interest that violates Plaintiff's Fifth and/or Fourteenth Amendments procedural due process rights.

79. Plaintiff incorporates by reference all the allegations made in the preceding paragraphs of this Complaint.

80. The judicial process in the Commonwealth courts will not provide Plaintiff a fair and impartial hearing in this case, in violation of the due process of law clauses of the Fifth or Fourteenth Amendments of the U.S. Constitution. First, the Supreme Court of Puerto Rico has prejudged this case in procedures to which Plaintiff was not a party and could not defend the propriety of the rents agreed upon. Second, because of the brooding omnipresence of the OCA in this case, the defendant being its Administrative Director, the Commonwealth lower courts are structurally and actually incapable of providing the Plaintiff a fair and impartial hearing.

81. During the month of September, 2014 the findings of the Comptroller's Report in the present case became an issue in the press. Various Justices publicly demanded from the Chief Justice changes to the Regulations on auctions in the Judicial Branch. As a result of this, on November 12, 2014, a majority of the Supreme Court issued a Resolution entitled In re: Regulations on Auctions for the Judicial Branch 2014 WL 5898173 (P.R.), 2014 T.S.P.R. 135. Quoting the findings in the Comptroller's Report in the present case, referring to the allegedly excessive rents, which it finds "alarming", this Resolution instructs the Secretariat of the Judicial Conference to prepare a new body of rules for auctions in the Judicial Branch which will preclude the alleged problems found in the Comptroller's Report involved in this case and also in another Report.

82. This Resolution followed the dissent of Justice Pabón Charneco, joined by Justice Feliberti Cintrón in *Maranello, Inc. v. Oficina de Administración de los Tribunales* 186 D.P.R. 780 (2012), a case in which negative findings of another Comptroller report were at issue. The majority of the court upheld the opposition of the OCA to the Comptroller's report in that case. The strong dissent, however, expressed dismay at the majority opinion and specifically commented on the Comptroller's Report at issue in the present case. After analyzing in detail

the findings of the Comptroller's Report in the present case (which was not at issue in that case) and its conclusion that the OCA would end up paying \$218,332,127 in "excessive" rent over 30 years, Justice Pabón Charneco questioned with emotion: "why does the Judicial Branch ignore the findings of the Comptroller and does not take action?"

83. The strong position taken by the majority of the Justices of the Supreme Court, accepting at face value the conclusion of the Comptroller's Report, that the rent agreed upon in the Lease Agreement is excessive, within the context of a public controversy, will not permit a fair and objective determination by the Commonwealth courts of the issues in this case. The Commonwealth courts' bias is both structural and actual. It is structural because the members of the Commonwealth judiciary who would adjudicate Plaintiff's claims stand to gain to the extent they favor the positions taken by the OCA. Any decision they make will impact upon the OCA's finances, which will in turn affect the judiciary's budget, including moneys that go towards the payment of the judges' salaries, staff, resources and facilities. Moreover, the OCA conducts periodic evaluations of all lower court judges, makes recommendation as to their transfers to different courts as well as ascension/demotion, and investigates any disciplinary complaints of judicial misconduct. Clearly, the Commonwealth Courts are not immune to the fact that the Defendant is the Administrative Director of the OCA, that what is involved in this lawsuit are the two main judicial buildings of this jurisdiction and that the Supreme Court has accepted the Comptroller's Report at face value and expressed "alarm" at its findings. This structural bias effectively prevents the Commonwealth Courts from being disinterested, objective and impartial adjudicators of the controversies between the Plaintiff and the OCA. The Commonwealth Courts' bias is also actual, as evidenced by the Court of First Instance's blind acceptance of the OCA's tortured and disingenuous argument with respect to the OCA's failure to give timely

notice under the Lease Agreement, and the Court's consequent dismissal of Plaintiff's second cause of action in the local case (See Paragraph 30 of this Complaint, supra).

84. This pressure on Commonwealth judges is now compounded by the press release issued by Defendant on January 18, 2015 where she announced, that furthering the plan laid out by Chief Justice Fiol Matta to reduce the expenses of the judicial branch of the Commonwealth of Puerto Rico, the Court of Appeals and OCA offices would be relocated to a government building, claiming that such a move would suppose an annual economy of \$10 million. The Defendant is conscious of the bias inherent in having the controversies between the Plaintiff and the OCA adjudicated by the Commonwealth Judiciary, as evidenced by the counsel's comment that "[t]here is no way that the Supreme Court is going to indemnify Cecort for breach of contract while the OCA is paying rent to another landlord" (See, paragraph 36 of this complaint, supra).

4. Plaintiff's fourth claim: Defendant's demand that plaintiff pay back part of the rent earned by performance under the Lease Agreement constitutes a taking of property for public use without just compensation in violation of the U.S. Constitution.

85. Plaintiff incorporates by reference all the allegations made in the preceding paragraphs of this Complaint.

86. The Takings Clause of the Fifth Amendment provides that property shall not "be taken for public use, without just compensation." U.S. Const. amends. V, XIV. This prohibition, which applies to Puerto Rico, *See P.R. Tel. Co. v. Telecomm. Regulatory Bd. of P.R.*, 665 F.3d 309, 323 n.18 (1st Cir. 2011), extends both to the "direct government appropriation or physical invasion of property" and to government regulations so onerous that they are "tantamount to a direct appropriation or ouster." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537 (2005).

87. The Defendant's attempt to use the judicial system of Puerto Rico, under color of state law, to force the Plaintiff to pay back some millions of dollars it lawfully earned under the lease Agreement, constitutes a direct taking: it would amount to expropriating and confiscating Plaintiff's property for the government's own benefit.

88. The judicial process in the Commonwealth courts will not provide Plaintiff a fair and impartial hearing in this case. Plaintiff does not have any viable remedy in the local courts. The Commonwealth courts would refuse to remedy Plaintiff's grievance.

VI ATTORNEYS' FEES

89. In the event Plaintiff is the prevailing party in this action, it is respectfully requested that the court allow it reasonable attorneys' fees incurred in this case as a part of its costs in accordance with 42 U.S.C. §1988.

VIII PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays the court to:

1. Render judgment enjoining Defendant from demanding that Plaintiff pay back to the OCA the allegedly excessive rent paid by the OCA to the Plaintiff under the Lease Agreement.
2. Render judgment enjoining the Defendant from cancelling the Lease Agreement.
3. Award Plaintiff costs and reasonable attorney's fees.

RESPECTFULLY SUBMITTED

In San Juan, Puerto Rico, this day of March 2015.

S/Manuel San Juan

MANUEL SAN JUAN
USDC-PR No. 204706
Attorney for Plaintiff

S/Noel S. González Miranda

NOEL S. GONZALEZ MIRANDA
USDC-PR No. 114108
Attorney for Plaintiff

P.O. Box 9023587
San Juan, Puerto Rico 00902-3587
Tel. (787) 723-6669/723-6637
Fax. (787) 725-2932
Email: sanjuanm@microjuris.com

420 Ponce de León Ave., Suite 904
San Juan, Puerto Rico 00918-3409
Tel. (787) 767-9494
Fax. (787) 281-6585
Email: ngm@gmgalaw.com