93812-2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:19-cv-23988-RNS

DANIEL A. GONZALEZ,

Plaintiff,

v.

AMAZON.COM, INC., a Delaware Corporation, and SUSSHI INTERNATIONAL, INC., a Florida corporation d/b/a FOGO CHARCOAL,

Defendants.
_____/

DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Defendant SUSSHI INTERNATIONAL, INC., d/b/a/ FOGO CHARCOAL (hereinafter referred to as "FOGO"), by and through its undersigned counsel, pursuant to Florida Rules of Civil Procedure 8(a) and 12(b)(6), respectfully requests this Honorable Court enter an order dismissing Plaintiff's Complaint [DE 1], and in support thereof, states as follows:

INTRODUCTION & SUMMARY OF THE ARGUMENT

The Plaintiff is attempting to pursue a private action under Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (the "Helms-Burton Act"). The Plaintiff seeks damages from Defendant FOGO for trafficking in property (real estate) allegedly confiscated by the Cuban Government at the time of the communist revolution. FOGO's conduct is lawful as it is licensed by the Treasury Department. It is not trafficking.

Plaintiff's complaint fails under both Rules 8(a) and 12(b)(6) because, not only does Plaintiff fail to allege sufficient standing to bring this action, he also fails to allege any plausible claim of relief. Plaintiff fails to meet his burden of establishing ownership of the claim to the confiscated property. Plaintiff fails to plead any plausible nexus between FOGO's imported marabu charcoal and the alleged confiscated property, absent which he can never satisfy the threshold requirements of the statute under which he seeks to recover. *See* 22 U.S.C. § 6082(a)(1)(A). Plaintiff also fails to plausibly plead how Defendant FOGO has either "knowledge" or "reason to know" that its conduct is anything other than lawfully licensed activity. *See* 22 U.S.C. § 6081(13).

Permitting this claim to advance would frustrate the original intent of the Cuban Embargo. Both President John F. Kennedy in the 1962 Proclamation announcing the Embargo and the plain text of the legislation and regulations, connected together to create and enforce the Embargo, show the prohibition in transactions with Cuba was never absolute. Accordingly, Plaintiff's allegations of FOGO's "trafficking" are insufficient to meet his initial burden pursuant to 22 U.S.C. § 6082, warranting dismissal.

ARGUMENT & MEMORANDUM OF LAW

I. Material Allegations in the Complaint.

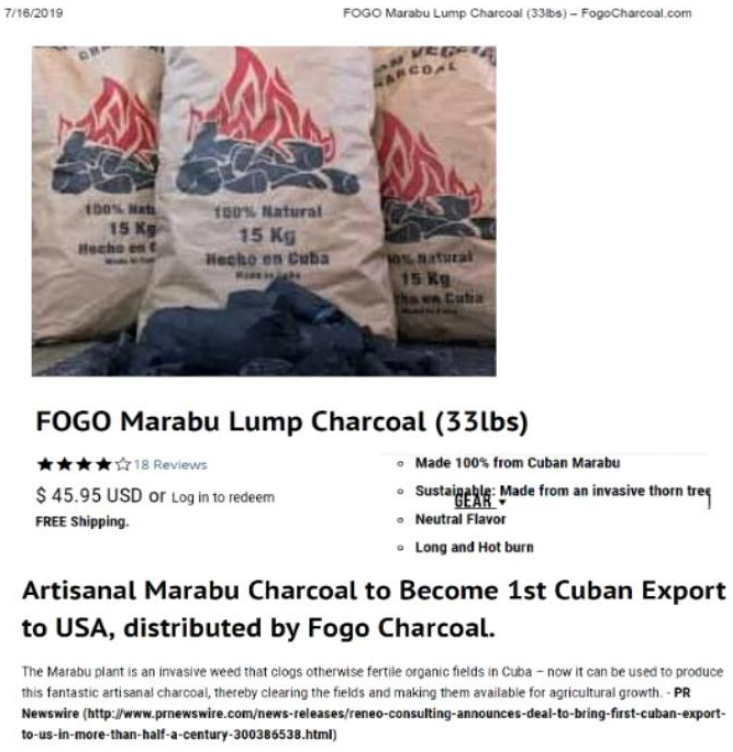
a. Allegations Regarding Standing.

The Plaintiff, Daniel A. Gonzalez ("Plaintiff"), alleges his "grandfather, Manuel Gonzalez Rodriguez, purchased the land comprising the Subject Property from 1941 through 1952. By operation of succession, ownership of

the Subject Property was passed on to Plaintiff." (Compl. ¶ 9 [DE 1]) The land is allegedly a "2,030 agricultural acre property located in the province of Oriente (now "Granma"), Cuba in the Republic of Cuba." (Compl. ¶ 9) Plaintiff further alleges that "[t]he communist Cuban Government maintains possession of the Subject Property and has not paid any compensation to Plaintiff for its seizure." (Compl. ¶ 12)

b. Allegations Regarding Trafficking.

Turning to the Defendants, the Plaintiff alleges "on or about January 5, 2017 and continuing thereafter, the Defendants, Amazon.com and FOGO Charcoal, knowingly and intentionally commenced, conducted, and promoted the sale of marabu charcoal produced on the Subject Property without the authorization of Plaintiff." (Compl. ¶ 18) Yet, the Plaintiff includes the following "figure" from Defendant FOGO's website:



(Compl. ¶ 19, Fig. 2) The text at the bottom of the figure states: "*The Marabu plant is an invasive weed that clogs otherwise fertile organic fields in Cuba* – now it can be used to produce this fantastic artisanal charcoal, thereby clearing the fields and making them available for agricultural growth." (emphasis added).

II. The complaint is not well-pled.

a. Plaintiff lacks standing to bring this action because he did not meet his burden of establishing ownership of the claim to the confiscated property.

1. There is no certified claim of ownership.

Plaintiff alleges he is the "rightful owner" of a 2,030-acre property in the current Cuban province of Granma, which his grandfather purchased in 1941. (Compl. ¶ 9) In August 1964, the Cuban government "confiscated, expropriated and seized ownership and control" of the property. (Compl. ¶¶ 9, 11) "By operation of succession," Plaintiff retained ownership of the Subject Property. (Compl. ¶ 9) However, there is no certified claim of ownership of the interest in the Subject Property. (Compl. ¶¶ 16–17)

The Helms-Burton Act provides that "any person that . . . traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property." 22 U.S.C. § 6082(a)(1)(A). To bring a valid claim the plaintiff must show he owns the claim to the confiscated property. *See* 22 U.S.C. § 6082(a)(1)(A); *Garcia-Bengochea v. Carnival Corp.*, No. 1:19-cv-21725-JLK, 2019 WL 4015576, at *4 (S.D. Fla. Aug. 26, 2019). Congress has expressly

mandated how such a claim may be proven. *See* 22 U.S.C. § 6083. Pursuant to § 6083, a claim certified by the Foreign Claims Settlement Commission under Title V of the International Claims Settlement Act of 1949 is "conclusive proof of ownership of an interest in [the confiscated] property." 22 U.S.C. § 6083(a)(1). Here, however, Plaintiff (or his predecessors) did not file a claim with the Foreign Claims Settlement Commission under Title V of the International Claims Settlement Act of 1949 because they were not eligible to file when the property was confiscated[1]. (Compl. ¶ 16) A plaintiff without a certified claim may still pursue a claim under the Helms-Burton Act, but such a plaintiff has additional elements to prove to sustain such a claim: "that the interest in property that is the subject of the claim is not the subject of a claim so certified." *See* 22 U.S.C. § 6082(a)(5)(D).

Two opinions construing the Helms-Burton Act have been issued by this Court. *See Garcia-Bengochea*, 2019 WL 4015576, at *1; *Havana Docks Corp. v. Carnival Corp.*, No. 19-cv-21724-BLOOM/McAliley (S.D. Fla. Aug. 28, 2019). In both *Garcia-Bengochea* and *Havana Docks*, the plaintiffs sued Carnival Cruise line for "trafficking" in waterfront properties that the plaintiffs claimed to have owned before the properties' confiscation by the Cuban Government. *Garcia-Bengochea*, 2019 WL 4015576, at *1; *Havana Docks Corp.*, No. 19-cv-21724-

[1] Title V of the International Claims Settlement Act of 1949 authorized the Foreign Settlement Claims Commission to consider claims of U.S. nationals against the Cuban Government for losses resulting from the governments taking of property which occurred on or after January 1, 1959. The program had a filing deadline of January 1, 1967. *See* 22 U.S.C. § 1634 *et seq.*; U.S. Dept. of Justice, *Completed Programs – Cuba*, https://www.justice.gov/fcsc/claims-against-cuba.

BLOOM/McAliley. In those cases, the plaintiffs provided a certified claim of ownership in the property. The certification was a significant factor the Court considered in allowing those plaintiffs' claims to proceed beyond a motion to dismiss. *See Garcia-Bengochea*, 2019 WL 4015576, at *13 (noting that plaintiff's "interest is based upon the certified claim attached to the complaint"); *Havana Docks Corp.*, No. 19-cv-21724-BLOOM/McAliley (noting that the claim certification attached to the complaint evidenced a "valid claim to the subject property").

The Plaintiff here alleges he is not a certified property owner, because his grandfather was ineligible. (Compl. ¶¶ 16,17). Thus, he is required to plead and prove the requirements set forth in 22 U.S.C.A. § 6082(a)(5)(D) and 22 U.S.C.A. § 6083(a)(2). Yet, the Plaintiff provides nothing but the threadbare allegation that he owns the Subject Property by some form of intestate succession and that it is not the subject of a certified claim. The legal conclusion that the Plaintiff owns the "confiscated property" is inadequate under Rule 8.

2. The complaint does not allege when or how the Plaintiff acquired ownership of the claim.

There are no facts in the complaint supporting a claim that the Plaintiff timely acquired the claim. "In the case of property confiscated before March 12, 1996, a United States national may not bring an action under this section on a claim to the confiscated property unless such national acquired ownership of the claim before March 12, 1996." 22 U.S.C. § 6082(4)(B). Stated otherwise, a U.S. national cannot sue for trafficking in property confiscated before March

12, 1996 if they did not acquire ownership of the claim before March 12, 1996. *See id*. The present case potentially falls within this prohibition.

The Subject Property was allegedly confiscated in 1964, thirty-two years before 1996. (Compl. ¶ 11) The Plaintiff alleges that "[b]y operation of succession, ownership of the Subject Property was passed onto [him]" and that he is now the "rightful owner." (Compl. ¶ ¶ 9, 11) The Complaint leaves numerous questions unanswered. When did the Plaintiff obtain ownership of the Subject Property? Is the Plaintiff bringing this action on behalf of himself or others that may or may not have acquired the Subject Property before March 12, 1996? Did the individuals that precede the Plaintiff in the line of succession devise the Subject Property? Has the Plaintiff's grandfather, the original owner of the Subject Property, passed away? Has the Plaintiff's father or mother (there is no indication if the claim to the Subject Property is paternal or maternal property) passed away?

Without these answers, Plaintiff's allegations supporting a claim of ownership are scant and do not support a plausible claim for relief. *Bell Atl. Corp v. Twombly*, 550 U.S. 544, 570 (2007)(finding dismissal warranted where plaintiffs do not "nudge their claims across the line from conceivable to plausible"). The statute under which the Plaintiff seeks to recover explicitly prohibits his bringing this claim if he did not acquire ownership of the claim before March 12, 1996. And the Plaintiff does not allege he acquired an interest in the Subject Property before March 12, 1996. *See Hudon v. City of Riviera Beach*, 982 F. Supp. 2d 1318, 1326 n.3 (S.D. Fla. 2013)("As a general rule,

courts may consider only matters within the four corners of the complaint in deciding a motion to dismiss."); *In re Fontainebleau Las Vegas Contract Litig.*, 716 F. Supp. 2d 1237, 1246 (S.D. Fla. 2010)("For purposes of deciding a motion to dismiss, [the Court's] review is limited to the four corners of the operative complaint").

This Court should not permit a Plaintiff to continue on a claim that he merely pleads that "by succession" he has an interest in the ownership of the Subject Property on an uncertified claim without setting forth more facts about how the Plaintiff's claim falls within the structure of 22 U.S.C. §§ 6082(a)(4)(B), 6082(a)(5)(D) and 6083(a)(2) and when he acquired his interest. Accordingly, Plaintiff's allegations are insufficient to meet his initial burden pursuant to 22 U.S.C. § § 6082 and 6083, warranting dismissal.

b. The allegations in the complaint fail to state a claim for "trafficking" in "confiscated property."

Since *Twombly* and *Iqbal*, Federal Rule of Civil Procedure 8 requires that the allegations plausibly state a claim for relief. *Bell Atl. Corp v. Twombly*, 550 U.S. 544, 555 (2007)(to survive a motion to dismiss, a plaintiff must plead facts sufficient to "state a claim to relief that is plausible on its face"); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)("only a complaint that states a plausible claim for relief survives a motion to dismiss."). Here, taking the allegations regarding trafficking in charcoal derived from the marabu plant together with the allegations regarding Plaintiff's claim of ownership in the property, a

fundamental question remains: what allegation connects the weed-like marabu plant charcoal to Plaintiff's land? None.

There is no plausible nexus, alleged or otherwise, between the marabu charcoal FOGO sold on its website and the Plaintiff's "confiscated" property. "The Marabu plant is an invasive weed . . . ." (Compl. ¶ 19, Fig. 2) The Plaintiff has made no effort to link the "invasive weed" based charcoal sold by FOGO to any "invasive weed" grown on his Grandfather's property, nor does he allege his Grandfather's confiscated property was the marabu plant or marabu charcoal. To plausibly state a claim, the Plaintiff must allege some plausible nexus between property being trafficked and the property he has an ownership interest in. *See Schaaf v. Residential Funding Corp.*, 517 F.3d 544, 549 (8th Cir. 2008)("When ruling on a motion to dismiss, we look to whether the plaintiff's allegations suffice to show the required casual connection between defendant's wrongful conduct and the plaintiff's losses."). Plaintiff's claim, as alleged, is equivalent to alleging *my relative owned land in Cuba and because you sell an item that grows on land in Cuba, you are liable for damages*. This does not satisfy Rule 8, nor does it satisfy the statutory requirements to state a claim under 22 U.S.C. § 6082.

The first sentence of 22 U.S.C. § 6082 requires showing both that the defendant "traffics in property which was confiscated" and that the plaintiff "owns the claim to such property." 22 U.S.C. § 6082(a)(1)(A)[2]. The fundamental

[2] "Except as otherwise provided in this section, any person that, after the end of the 3-month period beginning on the effective date of this subchapter, traffics in property which was confiscated by the Cuban Government on or

connection between these two requirements is missing. The complaint itself recognizes the property FOGO traffics in is charcoal made from "an invasive weed that clogs otherwise fertile organic fields in Cuba." (Compl. ¶ 19, Fig. 2) In other words, the property being trafficked in is not found on a single plot of land, but can be found in "otherwise fertile organic fields" across the whole country. (*Id*.) Further, no assertion exists that the Plaintiff's Grandfather held any property interest in the marabu plant or the marabu charcoal being sold by FOGO. Thus the Plaintiff cannot satisfy the threshold requirements of 22 U.S.C. § 6082(a)(1)(A) that the defendant "traffics in property which was confiscated" and the plaintiff "owns the claim to such property." Therefore, dismissal is proper. *See American Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1290−93 (11th Cir. 2010)(finding dismissal warranted where the plaintiff failed to plausibly allege those facts necessary under the relevant statute).

c. The import of Cuban charcoal is licensed activity.

The Congressional findings set forth in 22 U.S.C. § 6081, which support the cause of action created under Title III of the Helms Burton Act, 22 U.S.C. § 6082, describe a very specific form of "trafficking," which is not alleged to exist in this case. "Trafficking" under Title III in 22 U.S.C. § 6081 is narrowed from the general definition of "traffics" in 22 U.S.C. § 6023(13). In fact, 22 U.S.C. § 6082 is titled "Liability for *trafficking* in confiscated property claimed by United

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after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages." 22 U.S.C. § 6082(a)(1)(A).

States nationals." (emphasis added). This statute, which creates the private cause of action, begins with "(a) Civil remedy" and then sets forth the elements under sub-part (1) for "Liability for *trafficking*." 22 U.S.C. § 6082(a)(1). Although "trafficking" is not defined in 22 U.S.C. § 6023, the section which defines each relevant term as it is presented in the statute, "trafficking" does appear with quotation marks around it in 22 U.S.C. § 6081(6). As set forth below, the word "trafficking" in sub-part (6) is preceded by the word "This[3]," thereby modifying "trafficking" to the preceding description in sub-part (5). In other words, sub-part (5) defines "trafficking" as it pertains to the subsequent statutes. In relevant part, 22 U.S.C. § 6081 provides:

> (5) The Cuban Government is offering foreign investors the opportunity to purchase an equity interest in, manage, or enter into joint ventures using property and assets some of which were confiscated from United States nationals.
>
> (6) This "trafficking" in confiscated property provides badly needed financial benefit, including hard currency, oil, and productive investment and expertise, to the current Cuban Government and thus undermines the foreign policy of the United States--
>
> > (A) to bring democratic institutions to Cuba through the pressure of a general economic embargo at a time when the Castro regime has proven to be vulnerable to international economic pressure; and
> >
> > (B) to protect the claims of United States nationals who had property wrongfully confiscated by the Cuban Government.
>
> (7) The United States Department of State has notified other governments that the transfer to third parties of properties

[3] "This:" (2)(b): the one more recently referred to." *See* https://www.merriam-webster.com/dictionary/this (last visited Oct. 23, 2019).

> confiscated by the Cuban Government "would complicate any attempt to return them to their original owners".

22 U.S.C.A. § 6081 (5)-(7) (emphasis added). As defined, "trafficking" is committed when "[t]he Cuban Government" via "offering[s] [made to] foreign investors" for "the opportunity to purchase an equity interest in, manage, or enter into joint ventures using property and assets" that "were confiscated from United States nationals." *Id*. At no point does the Plaintiff contend that Defendant engaged in such "trafficking." *Id*.

Rather, the complaint asserts that "beginning on or about January 5, 2017 and continuing thereafter, the Defendants also knowingly and intentionally participated in and profited from the communist Cuban Government's possession of the Subject Property. . . ." (Compl. ¶ 19) The Plaintiff alleges that FOGO's "website boasts that the product is the '[First] Cuban Export to USA' and 'Made from 100% Cuban Marabu.'" (*Id*.) Allegation nineteen of the complaint references both FOGO's website and a third-party website: https://www.prnewswire.com/news-releases/reneo-consulting-announces-deal-to-bring-first-cuban-export-to-us-in-more-than-half-a-century-300386538.html (last visited, Oct. 22, 2019).

The article identified in Figure 2 of allegation nineteen states, in pertinent part, as follows:

> Reneo Consulting LLC announced today that its subsidiary company Coabana Trading LLC has finalized an agreement with Cuba Export to import into the United States Marabu (sicklebush) charcoal produced in Cuba. This marks the first time in more than half a century that a Cuban-produced product will be exported from Cuba and sold in the United States.

> "Marabu charcoal is cut and produced by private Cuban cooperatives, providing them with a growing market less than 100 miles away. ..."
>
> "Of course," Gilbert [Chairman of Reneo] added, "we still are severely limited in what we can do by the so-called embargo, the most severe trade and travel restrictions we have imposed on any country in the world. ... In the meantime, we will do all that we can to expand our economic relations with the people of Cuba."
>
> Cuban Marabu charcoal should be available in the United States in early 2017, marketed by Fogo Charcoal, a subsidiary of Susshi International Inc. and sold through various retailers.

The article explains that the FOGO charcoal was *not* trafficking through "[t]he Cuban Government" via "offering[s] [made to] foreign investors" for "the opportunity to purchase an equity interest in, manage, or enter into joint ventures using property and assets" that "were confiscated from United States nationals," as contemplated under the 28 U.S.C. § 6081.

Instead, the items were lawfully brought into the United States after changes to the Embargo were made starting in January of 2015. These changes include the lawful importation of certain goods "produced by independent Cuban entrepreneurs."[4] 31 C.F.R. § 515.582. The State Department set forth a list of approved goods in the "Section 515.582 List," which includes all goods except those identified in certain "sections/chapters of

[4] *See* https://www.federalregister.gov/documents/2015/01/16/2015-00632/cuban-assets-control-regulations (last visited, Oct. 22, 2019); https://www.federalregister.gov/documents/2015/04/23/2015-09509/the-state-departments--515582-list (last visited, Oct. 22, 2019); https://www.usitc.gov/publications/332/pub4597.pdf, pg. 361 ("Categories in which Cubans can seek licenses, as of September 2013 ... 40. Charcoal manufacturer/seller."); 31 C.F.R. § 515.582.

the Harmonized Tariff Schedule of the United States (HTS)."[5] "Charcoal" is found in Section IX of the HTS.[6] Stated simply, "[i]n accordance with the policy changes announced by the President on December 17, 2014" charcoal imports "produced by independent Cuban entrepreneurs" are lawful imports and not "trafficking" under 28 U.S.C. § 6081. *See* 31 C.F.R. § 515.582 (a/k/a CACR § 515.582). It follows that FOGO's alleged "trafficking" – the generally licensed import of charcoal imports from "private Cuban cooperatives" (entrepreneurs) – is lawful activity and not "trafficking."

d. The scienter requirement is not met.

Additionally, before a person can be held liable for "trafficking" in confiscated property under 22 U.S.C. § 6082, that person must have the requisite scienter. Specifically, "a person 'traffics' in confiscated property if that person knowingly and intentionally" engages in one of the several enumerated, prohibited acts. 22 U.S.C. § 6023(13)(emphasis added). The statute defines "knowingly" as "with knowledge or having reason to know." 22 U.S.C. § 6081(9).

First, the Plaintiff does not allege that FOGO "knowingly and intentionally" "traffics" in the confiscated property. There is no assertion that

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[5] *See* https://2009-2017.state.gov/e/eb/tfs/spi/cuba/515582/237471.htm (last visited Oct. 22, 2019).

[6] Section IX of the HTS lists: "Wood and Articles of Wood; Wood Charcoal; Cork and Articles of Cork; Manufacturers of Straw, of Esparto or of Other Plaiting Materials; Basketware and Wickerwork." *See* https://hts.usitc.gov/current (last visited Oct. 22, 2019).

FOGO knew or should have known that the marabu charcoal was or was derived from "confiscated property." Likewise, the complaint lacks any allegation that FOGO "traffics" in property that it knew or should have known was confiscated. The complaint does not contend that FOGO "traffics" in the real estate that was confiscated, but only in marabu charcoal that grows like an invasive weed in Cuba.

Second, logic dictates that if a person engages in lawful activity, licensed by the U.S. Department of State, that person cannot "knowingly and intelligently" be "trafficking." The Federal Statutes and Regulations implementing the Cuban Embargo demonstrate that Defendant FOGO has neither "knowledge" nor "reason to know" that its conduct is anything other than conduct that it is licensed to engage in. Hence, the Plaintiff cannot legally maintain his claim against FOGO. As set forth above, FOGO merely imported items into the U.S. that were permitted under 31 U.S.C. § 515.582. 31 U.S.C. § 515.582 expressly authorizes the importation of certain goods produced by independent Cuban entrepreneurs. Defendant FOGO cannot have knowledge or reason to know that its conduct constitutes "trafficking" when its conduct is expressly permitted by federal law. Finding otherwise would be an illogical conclusion resulting from an unsupported leap. *See, e.g., Curry v. Block*, 738 F.2d 1556, 1560 n.6 (11th Cir. 1984)("Courts will not defer to . . . construction of statutes which create nonsensical results"); *Scarborough v. Office of Pers. Mgmt.*, 723 F.2d 801, 818 (11th Cir. 1984)(rejecting party's construction of a statute "that would create such nonsensical results."); *United States v.*

Turkette, 452 U.S. 576, 570 (1981)(noting that, in construing a statute, "absurd results are to be avoided").

Indeed, 22 U.S.C. § 6023(13) defines "traffics" broadly in the general provisions of the Helms-Burton Act. This broad definition of "traffics" should not be read to expand the definition of "trafficking" set forth in 22 U.S.C.A. § 6081 (5)-(7), which is the predicate for the private cause of action under 22 U.S.C. § 6082(a)(1)(A). Applying the broad definition of "traffics" here would offend the original intent of the Cuban Embargo as amended by the Helms-Burton Act. *See Rubin v. United States*, 449 U.S. 424, 431 (1981)(rejecting a party's interpretation of a statute that "conflicts with [it's] plain meaning . . . and its purposes"); *Tug Allie-B, Inc. v. United States*, 273 F.3d 936, 941 (11th Cir. 2001)("statutes relating to the same subject matter should be construed harmoniously"); *Dombrowski v. Swiftships Inc.*, 864 F. Supp. 2d 1242, 1250 (S.D. Fla. 1994)("When interpreting a statute, the court will . . . give to it such a construction as will carry into execution the will of the Legislature.").

From the beginning, the President and Congress envisioned exceptions to the prohibition of trade between the U.S. and Cuba. This is evidenced in the text of each legislative enactment creating and implementing the Cuban Embargo. Beginning in 1962 with the Proclamation announcing the Embargo, former President John F. Kennedy authorized exceptions to the prohibition of trade between the U.S. and Cuba.

> I, John F. Kennedy, President of the United States of America . . . [h]ereby proclaim an embargo upon trade between the United States and Cuba . . . and I hereby authorize and direct the Secretary of the Treasury . . . to make such exceptions thereto.

See Proclamation No. 3447, 76 Stat. 1446 (Feb. 3, 1962). In 1996, both the Helms-Burton Act and the Cuban Assets Control Regulations ("CACR") were enacted. 22 U.S.C. §§ 6021−6091 (1996); 31 C.F.R. § 515 (1996). Although § 515.204 of the CACR generally prohibits the importation of and dealings in certain Cuban goods, it also explicitly provides for authorized exceptions: those "specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations instructions, licenses, or otherwise." 31 C.F.R. § 515.204. Further, 31 C.F.R. § 515.101, titled "Relation of this part to other laws and regulations," explicitly states that "[n]o license or authorization contained in or pursuant to this part shall be deemed to authorize any transaction prohibited by any law other than the Trading with the Enemy Act, 50 U.S.C. App. 5(b), as amended, the Foreign Assistance Act of 1961, 22 U.S.C. 2370, or any proclamation, order, regulation or license issued pursuant thereto."

CACR § 515.101 explicitly references 22 U.S.C. § 2370, *i.e.*, the CACR contemplated the provisions of 22 U.S.C. § 2370 as it stood in 1996. From 1996 to today, sub-section (a) of § 2370, titled "Cuba; embargo on all trade," provides that the President may authorize exceptions to the total embargo:

> (a) Cuba; embargo on all trade
>
> (1) No assistance shall be furnished under this chapter to the present government of Cuba. As an additional means of implementing and carrying into effect the policy of the preceding sentence, the President is authorized to establish and maintain a total embargo upon all trade between the United States and Cuba.

> (2) *Except as may be deemed necessary by the President in the interest of the United States*, no assistance shall be furnished under this chapter to any government of Cuba, nor shall Cuba be entitled to receive any quota authorizing the importation of Cuban sugar into the United States or to receive any other benefit under any law of the United States, until the President determines that such government has taken appropriate steps according to international law standards to return to United States citizens, and to entities not less than 50 per centum beneficially owned by United States citizens, or to provide equitable compensation to such citizens and entities for property taken from such citizens and entities on or after January 1, 1959, by the Government of Cuba.

22 U.S.C.A. § 2370 (emphasis added). The Helms-Burton Act, which provides for the subject cause of action, was enacted in March 12, 1996 by Public Law 104-114. *See* Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, Pub. L. No. 104-114, 110 Stat. 785 (Mar. 12, 1996). 22 U.S.C. § 2370 was amended by the Helms-Burton Act upon its enactment. *See* 22 U.S.C. § 2370 (1998) (noting that the section is amended by Pub. L. 104-114); 22 U.S.C. § 6021 (1996) ("Short Title. 1996 Acts. Section 1(a) of Pub. L. 104-114 provided that: 'This Act . . . amending sections 2295a, 2295b, 2370, 6003, and 6004 of this title . . .").

In turn, the Helms-Burton Act, 22 U.S.C. § 2370(a), and the CACR must all be read together. When read together, it is clear that there are and have always been lawful exceptions to the Embargo, beginning when President Kennedy announced the Embargo in 1962. The recognized lawful exceptions to the Embargo cannot logically be deemed under the Helms-Burton Act to subject persons trading under these recognized exceptions, via licenses

expressly issued by the U.S. Department of Treasury, to civil liability for "knowingly" "trafficking" in confiscated property.

CONCLUSION

Therefore, Plaintiff's Complaint fails to satisfy the requirements of Federal Rules of Civil Procedure 8(a) and 12(b)(6). Not only does Plaintiff lack standing to bring this action, he also does not assert a plausible claim that Defendants' explicitly lawful and licensed activity amounts to "trafficking" as defined by the Helms-Burton Act. Permitting recovery here would offend the original intent, purpose, and recognized exceptions of the Cuban Embargo. Thus, dismissal with prejudice is proper.

LOCAL RULE 7.1(B)(2) REQUEST FOR HEARING

Defendant FOGO respectfully requests this Honorable Court set this Motion to Dismiss for hearing. This Motion presents new issues of law that have yet to be ruled upon by any Court. Specifically, no Court has ruled upon the necessary pleading requirements for stating a claim under the Helms-Burton Act when: (1) the claimant does not have a certified claim; (2) the claim concerns goods lawfully imported to the U.S. under a General License published by the Treasury Department; and (3) that is not the "confiscated property" (real estate), but goods purportedly derived from the land. The interplay between the statutes and the regulations that form the Cuban Embargo are complicated, and this Defendant believes an open discussion with the Court would be beneficial in resolving the issues set forth in this Motion and potentially bringing this case to resolution.

Respectfully submitted on this 19th day of November, 2019 by,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Clerk of Court using the CM/ECF system on November 19, 2019, and the foregoing document is being served this day on all counsel or parties of record on the Service List below, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive Notices of Electronic Filing.

Brandon J. Hechtman, Esquire

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