UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 19-23590-CIV-GAYLES

HAVANA DOCKS CORPORATION,

Plaintiff,

vs.

ROYAL CARIBBEAN CRUISES LTD.,

Defendant.
_____/

DEFENDANT'S ANSWER TO THE COMPLAINT

Defendant Royal Caribbean Cruises Ltd. ("Royal Caribbean"), in paragraphs corresponding to the paragraphs of Plaintiff's Complaint [DE 1], answers the allegations as follows:[1]

1. This paragraph contains conclusions and statements of law to which no response is required. To the extent a response to this paragraph is required, Royal Caribbean denies the allegations contained in this paragraph.

2. Royal Caribbean lacks knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

3. Royal Caribbean admits that it is a foreign corporation that maintains its principal executive office in Miami, Florida, and that it owns and operates numerous brands of cruise lines, but it otherwise denies the allegations contained in this paragraph.

[1] The defendant in Case No. 19-CIV-21724 has filed a motion asking Judge Bloom to certify certain issues for interlocutory appeal pursuant to 28 U.S.C. §1292(b). If Judge Bloom grants such relief, Royal Caribbean will move to stay this action pending the conclusion of that §1292(b) process.

4. Royal Caribbean admits that Plaintiff alleges that the Court can exercise original subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331, and that Plaintiff alleges that the amount in controversy exceeds $50,000, exclusive of interest, costs, and attorneys' fees, but Royal Caribbean otherwise denies the allegations contained in this paragraph.

5. Denied.

6. Royal Caribbean refers the Court to the Act for its content.

7. Royal Caribbean lacks knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

8. Royal Caribbean lacks knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

9. Royal Caribbean lacks knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

10. Royal Caribbean lacks knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

11. Royal Caribbean lacks knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

12. Royal Caribbean refers the Court to the certification for its content.

13. Royal Caribbean admits that in March 2017 – with express permission from the U.S. government, and pursuant to licenses issued by the U.S. government – some of the cruise ships that it operates began cruise service to Cuba, Royal Caribbean admits that it subsequently ceased such service, and Royal Caribbean otherwise denies the allegations contained in this paragraph.

14. Denied.

15. Denied.

16. Denied.

17. Royal Caribbean adopts the responses set forth in paragraphs 1 through 16.

18. Royal Caribbean admits that Plaintiff purports to bring its claim pursuant to 22 U.S.C. §6082, but otherwise denies the allegations contained in this paragraph.

19. Denied.

20. Denied.

21. This paragraph contains a legal conclusion to which a response is not required. To the extent this paragraph contains allegations of fact, Royal Caribbean refers the Court to the pronouncements of the U.S. Government for their content.

WHEREFORE, Royal Caribbean demands that judgment be entered in its favor, and that it be awarded any additional relief deemed appropriate.

Plaintiff's Demand For A Jury Trial

Royal Caribbean denies that Plaintiff has a right to a jury trial on its purported claim, and reserves its right to move to strike Plaintiff's demand for a jury trial.

AFFIRMATIVE DEFENSES

1. Plaintiff's claim is barred because Royal Caribbean's use of the Subject Property, and any transactions relating to the Subject Property, were incident to lawful travel to Cuba and necessary to the conduct of such travel.

2. Plaintiff's claim is barred because Plaintiff's concession for the Subject Property expired years before Royal Caribbean's use of the Subject Property began.

3. Plaintiff's claim is barred by the Due Process Clause of the Fifth Amendment because Plaintiff is seeking to hold Royal Caribbean liable for conduct that was authorized by the

Office of Foreign Assets Control, U.S. Department of Treasury, under the Cuban Assets Control Regulations ("CACR"), 31 CFR Part 515, and by the Bureau of Industry and Security, U.S. Department of Commerce, under the Export Administration Regulations, 13 CFR Part 730.

4. Plaintiff's claim is barred because Plaintiff is seeking to use against Royal Caribbean findings that were made by the Foreign Claims Settlement Commission in proceedings of which Royal Caribbean did not have notice and in which Royal Caribbean did not have an opportunity to participate.

5. The damages that Plaintiff seeks to recover are unconstitutional because they are wholly disproportionate, grossly excessive, and bear no relationship to Royal Caribbean's conduct and dealings with respect to the Subject Property, which were limited to landing passengers at the pier in the port in Havana, and not claiming or exercising ownership of the pier or the port.

6. Plaintiff's claim for damages is barred because Plaintiff is seeking to recover from other entities the same damages, arising from the same property and facts, that it is seeking to recover from Royal Caribbean. Plaintiff cannot have more than one recovery for or satisfaction of his alleged injuries.

7. Any recovery or compensation that Plaintiff receives from other sources must be set off against any recovery that he receives from Royal Caribbean.

8. Plaintiff's claim is barred due to lack of standing and a failure to present a justiciable case or controversy, in that Plaintiff has not suffered and injury-in-fact that is fairly traceable to conduct by Royal Caribbean.

9. Plaintiff's claim is barred because it is premised upon conduct undertaken by a foreign government and outside the United States.

10. Plaintiff's claim violates the *Ex Post Facto* Clause because it is premised upon conduct that occurred before the LIBERTAD Act came into effect.

11. Plaintiff's claim is barred because this District is an inappropriate venue for this action.

12. Plaintiff's claim for damages is barred because Royal Caribbean did not "traffic" in all of the property that is the subject of the claim that was certified by the Foreign Claims Settlement Commission.

13. Plaintiff's claim is barred by 22 U.S.C. §6082(f) because Plaintiff has brought another civil action under federal law seeking monetary compensation by reason of the same subject matter.

14. In a letter dated February 11, 2019 that was sent to Royal Caribbean, a person named Mickael Behn claimed that he "personally" has rights to the Subject Property. Plaintiff's claim thus fails because, at the very least, Mr. Behn – whom is not a party to this action – is an indispensable party as that term is used in Rule 19 of the Federal Rules of Civil Procedure.

15. Plaintiff's claim is barred by the act of state doctrine, which must be applied here because it has constitutional underpinnings. *See Occidental of Umm al Qaywayn, Inc. v. A Certain Cargo of Petroleum Laden Aboard Tanker Dauntless Colocotronis*, 577 F.2d 1196, 1201 n.4 & n.6 (5th Cir. 1978) ("Although in one decision the [Supreme] Court stated both that the [act of state] doctrine had constitutional underpinnings and the doctrine was not compelled by the Constitution, the better view would be that the doctrine is constitutionally compelled by the concept of separation of powers and placement of plenary foreign relations powers in the executive.").

16. The amount certified by the Foreign Claims Settlement Commission is incorrect and therefore rebuttable. The Commission acknowledged in its decision that "the terms of the concession granted by the Cuban Government were to expire in the year 2004, at which time the corporation [Plaintiff] had to deliver the piers [including all buildings and equipment thereon] to the government in good state of preservation." Yet, the Commission failed to reduce the value of the assets, which it determined as of the date of their naturalization in 1960, by the residual value of the assets in 2004, when the concession would have expired and Plaintiff would have been required to return all such assets to the Cuban government.

17. Plaintiff's claim is barred because the claim that was certified by the Foreign Claims Settlement Commission in 1971 was for use in obtaining reparations from the Cuban government due to the confiscation of property, and not for later use in a civil lawsuit against an entity that had nothing to do with the confiscation of the property.

18. Plaintiff's claim is barred in whole or in part by Article II of the U.S. Constitution to the extent that Plaintiff's claim seeks to impose liability for foreign policy decisions made by the Executive Branch.

19. Plaintiff's damages claim is barred in whole or in part by the Eighth Amendment.

20. Plaintiff's claim is barred in whole or in part because Royal Caribbean did not knowingly traffic in the Subject Property.

21. Plaintiff's claim fails to state a claim upon which relief can be granted.

22. Plaintiff's claim is barred in whole or in part by the applicable statute of limitations because it involves uses of property and transactions that occurred more than two years before suit was filed. *See* 22 U.S.C. §6084.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of October 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF System.

By: /s/ Scott D. Ponce