COMMONWEALTH OF PUERTO RICO
COURT OF APPEALS
PANEL VIII

NATIONAL PUBLIC FINANCE GUARANTEE CORPORATION; et al. **Plaintiffs-Appellees** **v.** **UBS FINANCIAL SERVICES, INC.; et al.** **Defendants-Appellants**	**KLCE202100827**	***CERTIORARI* FROM THE TPI, SUPERIOR COURT OF SAN JUAN** **CASE NO.: SJ2019CV07932** **RE:** **ACTOS PROPIOS AND UNILATERAL DECLARATION OF WILL**

MOTION FOR RECONSIDERATION

TO THE HONORABLE COURT OF APPEALS:

Plaintiffs-Appellees **NATIONAL PUBLIC FINANCE GUARANTEE CORPORATION** and **MBIA INSURANCE CORPORATION** (hereinafter "National"), **APPEAR** through their undersigned counsel, and very respectfully **STATE, ALLLEGE and REQUEST**:

INTRODUCTION

On December 17, 2021, this Honorable Court issued a ruling written by Judge Vázquez Santisteban, which was notified on the 20th of the same month (hereinafter, the "Judgment"), with which it issued the writ of *Certiorari* to revoke a decision issued by the Hon. Ladi Buono De Jesus (hereinafter, the "Appealed Decision"). The lower court's opinion was comprehensive, well-founded and, more importantly, correct in law. However, this Appellate Court reversed it with a Judgment that ignores the important and solid precedents on which the Court of First Instance ("TPI") based its actions when it refused to dismiss the complaint at the pleading stage. At this crossroads, there is an evident need for this Honorable Court to reconsider its Judgment that dismissed the complaint with a superficial opinion that erroneously subsumed it in a claim under Art. 1802 of the Civil Code of 1930 (hereinafter, "Art. 1802"), even though these are equitable claims to which Art. 7 applies, not Art. 1802.

The concrete consequence of that erroneous Judgment is that it impedes the ordinary procedural development of a case of high public interest and of important implications for Puerto Rico, which must be resolved in a plenary trial, since discovery and the eventual presentation of evidence are crucial to demonstrate the merits of the equitable action under Art. 7. This lawsuit is the only opportunity that Puerto Rico's courts will have to adjudicate, on the merits, the

corresponding liability of the defendant Banks for the greatest financial debacle Puerto Rico has ever experienced and which precipitated the Government's bankruptcy, the passage of PROMESA, and the appointment of the Fiscal Oversight Board.

Note that the filed action is clearly based on the defendant Banks' liability under the doctrines of *actos propios* and unilateral declaration of will, recognized in our legal system as autonomous sources of obligations, the breach of which justifies the granting of a remedy. *Ortiz Rivera v. P.R. Tel. Co.*, 162 DPR 715, 731 (2004); *Int'l Gen. Elec. v. Concrete Builders of P.R., Inc.*, 104 DPR 871 (1976). Also, Puerto Rico's civil jurisprudence affirms that the contribution of the *International General Electric* case is that the Supreme Court applied the doctrine of *actos propios*, derived from the principle of good faith, to establish new sources of obligations. *See* Michel J. Godreau Robles, *Lealtad y Buena Fe Contractual*, 58 Rev. Jur. U.P.R. 367, 396 (1989).

The truth is that the principles on which the plaintiffs' claims are based transcend the private sector because, as the Supreme Court of Puerto Rico has made clear, enforcing promises to comply with the law or industry standards and customs protects and advances public order, and is moreover indispensable in a State governed by the rule of law. *See Méndez Moll v. AXA*, 202 DPR 630, 648-50 (2019). This is particularly true in the context of the instant case given the "vital role [the] [insurance] industry plays in both our society and our economy." *O.C.S. v. Universal Ins. Co.*, 187 DPR 164, 174 (2012). Enforcing the law also promotes the cardinal principle of good faith, which "permeates our entire legal scheme," *S.L.G. Irizarry v. S.L.G. García*, 155 DPR 713, 731 (2001), and which the defendant Banks violated with impunity by failing to comply with the obligation they voluntarily assumed towards National.

In issuing this appeal, this Court intervened to erroneously dismiss a complaint at the pleading stage and disregarded the careful judgment of the TPI, even though it had correctly ruled that the liability alleged in the complaint does **not** emanate from Art. 1802 because the claim does **not** arise from illicit and willful acts, fraud, or willful or negligent omissions. The lower court concluded in its detailed decision that the allegations in the complaint are based on facts related to the defendant Banks' breach of an obligation they voluntarily assumed through their conduct and statements when applying for insurance. This obligation consisted of carrying out an investigation to form a reasonable basis as to the truth and sufficiency of the official declarations that the appellants presented to the plaintiffs in requesting that they insure certain bond issuances.

Instead, this Honorable Court granted the writ of *Certiorari* to erroneously reject the TPI's reasoned opinion and, although it was not required to do so, it chose to issue an opinion. It did so, however, without any discussion or analysis, with erroneous conclusory statements in which it notes that "from a light examination of the allegations of the [c]omplaint the classic elements of a cause of action for damages clearly emerge" (Judgment, p. 13, emphasis added); "this is an allegation of negligence paradigmatic of Section 1802" and that, therefore, "equitable remedies are displaced in the instant case" (Judgment, p. 14.); "because a statutory remedy is applicable, equitable remedies are not available". *Id.* It is evident that the admittedly cursory analysis set forth in the Judgment led this appellate forum to a result contrary to law.

DISCUSSION AND ANALYSIS[1]

First, it cannot be ignored that the Supreme Court has made it clear that an equitable action **cannot** be dismissed before the presentation of **evidence** just because it is alleged that a statute applies to the case. *See Ortiz v. P.R. Tel.*, 162 DPR 715, 731 (2004). Therefore, the result reached by this Honorable Court to dismiss the complaint at the initial pleading stage, without prior discovery and showing of evidence, is erroneous as a matter of law even in the face of a motion to dismiss based on Art. 1802 allegedly applying. This shows, moreover, that this Honorable Court erred in the application of the standard in Civil Procedure Rule 10.2, 32 LPRA App. V, R. 10.2, which requires accepting the allegations of the complaint as true and examining them in the manner **most favorable** to the plaintiff. Therefore, in accordance with the procedural regulations, only if the plaintiff could not prevail under any set of factual and legal assumptions, then it would be appropriate to dismiss the claim at the initial stage of allegations. The "light" examination of the complaint's allegations carried out by this Honorable Court is not the one required by our legal system to dispose of this appeal fairly and adequately, much less in a case of such public interest and which presents important novel controversies in law. Respectfully, we maintain that this appellate forum should not have rejected the correct finding of the lower court, but rather should have refused to intervene at this stage, giving way to discovery, as the lower court had ordered, because it was the correct thing to do at the initial procedural stage.

[1] Rule 84 of the Rules of Appellate Procedure provides for reconsideration when there is an error in the determination or application of the law, which is precisely the case with the Judgment whose reconsideration is requested. Through this request this appellate court has the opportunity to reexamine its decision and correctly apply the legal grounds that we set forth below.

i) **Why Art. 1802 of the Civil Code does not apply**. The admittedly "light" (Judgment, p. 13)[2] analysis of the complaint's allegations led the reviewing panel to the erroneous path of not accepting them as true, as required by jurisprudential guidelines, because if they had carefully weighed them, they would have concluded that the obligations of the defendants-appellants, which generate liability in this case, and which arise from their particular relationship with the plaintiffs-appellees, were "voluntarily" assumed and do **not** arise from the independent general duty arising from Art. 1802. This is precisely why the lower court correctly determined that the complaint does **not** allege the elements of an Art. 1802 claim such as a wrongful act or fraud, which makes it inapplicable.

The elements of a claim under Art. 1802 are: "[1] damage [2] [the occurrence] a culpable or negligent action or omission, and [3] the corresponding causal relationship between the damage and the culpable or negligent conduct." *Hernández Vélez v. Televicentro*, 168 DPR 803, 812 (2006) (missed appointments). As the lower court observed (Ap. 20), Art. 1802 obligations do not arise from the will of the parties, nor due to a prior legal contract or relationship between them, but rather from the obligations and duties imposed by law. *See Treated Woods v. Sun Alliance*, 185 DPR 880, 908 (2012); *Santiago Nieves v. A.C.A.A.*, 119 DPR 711, 716 (1987). In addition, a claim for negligence under Art. 1802 cannot be raised if there is no duty of care imposed or recognized by law. *Hernández Vélez*, 168 DPR at 812-13. The Judgment issued by this Honorable Court must also be reconsidered because it is contrary to the jurisprudence of the Supreme Court, which affirm that the liability of Art. 1802 is "derived from the damage caused to another person, *without there being a prior agreed legal relationship between the tortfeasor and the injured party*", and "it is limited to fault or negligence *not related to a previous obligation*". *Municipality of Cayey v. Soto Santiago*, 131 DPR 304, 313 (1992) (emphasis added). If there is a prior relationship, as there is in this case, a cause of action is **not** established in accordance with Art. 1802, because the duties imposed by said prior relationship are exclusive to the parties, in contrast to those imposed by society. *See Rivera Sanfeliz v. Account Director of FirstBank*, 193 DPR 38, 57, 59–60 (2015).

The prior relationship between the parties need not arise from a contract; instead, it may arise from **any** prior relationship that creates a legal obligation between the parties. *See id.; Ramos Lozada v. Orientalist Rattan Furniture Inc.*, 130 DPR 712, 725 (1992). In fact, in this decision,

[2] In the Judgment the reviewing panel even shows its confusion by erroneously referring to the appellant Banks as "Insurers" and to the appellee insurers as "Banks." *See* Judgment, pp. 1 and 2. Whenever the term "Banks" is used with a capital letter in this brief, we refer to the defendants-appellants.

130 DPR at 725 n.7, the Supreme Court cited with approval Spanish judgments that clearly establish the inapplicability of Art. 1902 of the Spanish Civil Code (Art. 1802 of Puerto Rico Civil Code) when the liability arises from a prior legal relationship:[3]

> [t]he contractual fault may be preceded by a legal relationship that is not a contract but rather another kind ... since the general rule is the preferential application of the precepts regarding contractual liability: there being an obligation derived from the contract **or from a preceding analogous [legal] relationship**, it is not necessary to resort to Articles 1902 and 1903, [(1802 and 1803 of ours)] that govern the obligations arising from fault or negligence **without any agreement**." [...] "…this precept [(Art. 1802 our)] sanctioner of the principle 'nominen laedere'... is only applicable to correct or repair the damage caused by an unlawful act contrary to the relationships imposed by social coexistence, but not when the parties are intimately bound by a previous agreement, since [A]rt. 1101, of said Code the comes into play ... without it being feasible to simultaneously exercise the actions conferred by both legal rules a[u]n when the injury originated comes from the same fact (S. of June [of] 3, 1962) and without in the cases of liabilities arising from the breach of obligations being subject to the statute of limitations period to the rule contained in No. 2§A of [A]rt. 1968, but rather that which is set out in [Art.] 1964 of a general nature for personal actions.[4]

In short, to the extent there is a prior relationship between the parties in this case, Art. 1802 cannot apply. In this sense, the reasoned decision of the lower court is correct and the fact that this appellate forum's erroneous Judgment revoked it, openly disregarding the applicable norms, makes its reconsideration imperative.

On the other hand, reconsideration is also appropriate because the determination and application of the law in the Judgment is erroneous because if any element of a claim based on Art. 1802 is missing, the statute cannot be applied. In this case, multiple elements are missing, as the lower court properly found, "National's allegations do not meet the requirements of a cause of action under Art. 1802" and, therefore, that this precept cannot prevent National's claims. (Ap. 25). Note that, as determined by the lower court, the Banks' duties towards National "do not have their genesis in Art. 1802," so there can be no claim in light of that precept. (Ap. 25). By applying for insurance, the defendant Banks did not have a generic duty to National or anyone else to conduct due diligence, but rather, as the TPI correctly concluded and with good reason, the "alleged source of [the] defendant Banks' responsibility" to National—which they exclusively have toward National—is the specific obligation that they "voluntarily" assumed toward National for their conduct and representations when they submitted the insurance applications and "represented that they would investigate the content in the Official Statements." (Ap. 25; *see also*

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[3] *Ramos Lozada v. Orientalist Rattan Furnature, Inc.*, 130 DPR at 727, also establishes that only when the alleged conduct against the defendant violates both the general obligation of Article 1802 and an obligation arising from a previous similar contract or legal relationship is there a concurrence of actions and the plaintiff must opt for one of them. This does not apply in this case, because the duty of the defendant Banks to fulfill the obligation assumed via their conduct towards National is not a generic duty owed to society in general (*erga omnes*).

[4] (Emphasis added and citations omitted).

Compl. ¶¶ 97–98, 115–16). In other words, the duty of liability attributed in this case originated from the defendant Banks' own conduct and statements and not from the general duty of care independently imposed by Art. 1802.

This correct conclusion reached by the TPI after a weighty analysis follows the jurisprudence of the Supreme Court, which has held that **the conduct and promises alleged generate enforceable obligations—*independent of Art. 1802*—against the actor that causes a third party to rely in good faith on the actor's conduct and promises, to the detriment of the third party**. *See Ortiz*, 162 DPR at 732; *Int'l Gen.*, 104 DPR at 878. As the lower court correctly determined in the Appealed Decision, it is that "preexisting relationship created by the process of requesting insurance coverage made by the [Investment] Banks to National," together with the Banks' failure to comply with their obligations, which gives rise to the allegations of liability under the doctrines of actos propios and unilateral declaration of will. (Ap. 25–26; *see also* Compl. ¶¶ 20, 25, 40, 116–19, 121, 250). The defendant Banks' failure to comply refers to their obligations to National, not to society in general, which is why National's claim does not fall within the scope of the joint and several liability arising from Art. 1802, as erroneously concluded by this Honorable Court in its Judgment.

ii) <u>Incorrect application of Civil Procedure Rule 10.2</u>. It is clear that the Judgment incorrectly applies the right to the unfulfilled obligation, which arises from a duty arising from the **<u>voluntary</u>** conduct of the defendant Banks, who, in declaring that they carried out reasonable investigations, were bound to National. (Ap. 25). Although, even if Art. 1802 could apply, which we deny, it would be incorrect to conclude, as a matter of law, that Art. 1802 does indeed apply because the case is in the initial stage and presents many crucial factual disputes that require discovery and a presentation of evidence. These include, whether the defendants-appellants had a duty to National, the nature of that duty, if they violated that duty, if the violation caused damage to National, and whether the Banks acted with the requisite intent. None of these questions can be resolved against the plaintiffs on a motion to dismiss under Civil Procedure Rule 10.2, *supra*, at the pleading stage and without the presentation of evidence.[5]

[5] *See, e.g., William Contractor, Inc.*, 2016 WL 1317434, at *5 (Bankr. D.P.R. Apr. 1, 2016). In that case, the court refused to dismiss claims based on the doctrine of actos propios even when there were alternative claims under Art. 1802 because it concluded that it could not dismiss the claims *a priori* at the pleading stage. It concluded that, at most, one could only conclude from the allegations that the defendant "perhaps" had a "legal duty" and "perhaps violated that duty," which "perhaps" resulted in damages. That is the required examination of the allegations at the pleading stage and to the extent that this Honorable Court did not undertake its analysis from that standard, which is mandatory in the current procedural order, reconsideration of the Judgment is appropriate.

This Honorable Court applied the corresponding analysis in *Torres Flores v. Mun. Autónomo de Vega Baja*, KLCE201900895, 2019 WL 4509247 (TCA) (July 10, 2019). There the court reiterated that the dismissal of the Complaint is not appropriate when "*an argumentative platform has been provided from which a claim justifying the granting of relief can be derived*, ***subject to the eventual presentation and adjudication of the evidence***" (emphasis added). Precisely, in accordance with the well-established and clear standard to decide a motion to dismiss under Civil Procedure Rule 10.2(5) for failing to state a claim upon which relief can be granted, the TPI accepted as true National's allegations that it trusted and relied on that the defendants-appellants would comply with their obligations to carry out the reasonable investigation of the information they submitted to National when applying for insurance. In addition, it accepted National's allegation that the defendants failed to comply with these obligations as true. Then, the TPI correctly applied the law because there is a suitable factual basis in the Complaint and a correct argumentative platform for the causes of action based on the doctrines of actos propios and unilateral declaration of will, subject, of course, to the eventual discovery and presentation of evidence.

In sum, the Judgment, whose reconsideration we seek, does not cite any precedent that supports the decision to not to closely examine the allegations of the lawsuit (contrary to the case law) to fit them into an Art. 1802 remedy and discard, without further analysis, any remedy based in equitable principles.[6] That is not the situation in this case because Art. 1802 is clearly inapplicable to the obligation whose noncompliance is claimed.

iii) Determination of applicable law. However, if the Complaint were a tort action governed by Art. 1802, which it is not, then it would require the application of Puerto Rico conflict of laws rules to determine whether the substantive law of Puerto Rico or New York applies. This would lead to the conclusion that New York substantive law applies and that, based on this,

[6] Moreover, the Judgment is silent on the solid legal grounds outlined by the plaintiff in support of their claims, which the lower court exhaustively discussed and embraced in its opinion, guided by binding Supreme Court precedent. The defendant Banks in their appeal also did not cite a single case or legal rule that gives them the right to dismissal without the case being heard on its merits, at the pleading stage, prior to discovery and the presentation of evidence. On the contrary, the cases cited by the defendant Banks, in which some equitable claims were dismissed, are clearly distinguishable because they applied specific laws that governed the conduct in question. That is not the situation in the case at hand, since Art. 1802 is clearly inapplicable to the obligation whose breach is claimed. For example, in *Dalmau v. Hernández Saldaña,* 103 DPR 487, 489 (1975), the application of Art. 7 was rejected because the provision in the Civil Code of Puerto Rico governing leases applied. Many of the federal cases cited in the Banks' brief do not support their argument either. In *Westernbank P.R. v. Kachkar*, 2009 WL 6337949, at *29 (D. P.R. Dec. 10, 2009), *report and recommendation approved* 2010 WL 1416521 (Mar. 31, 2010), a counterclaim for unjust enrichment was dismissed in an action where ten other causes of action for the breach of certain loan agreements. In *In re Méndez García*, 2014 WL 1464850, on page 7 (Banker D.P.R. Apr. 15, 2014) the application of the doctrine of actos propios to a claim was rejected because the dispute was subject to "vast statutory authority". Finally, in *Ocaso, S.A., Compañía de Seguros y Reaseguros v. Puerto Rico Maritime Shipping Authority*, 915 F. Supp. 1244, 1253 (D.P.R. 1996), the dismissal took place via summary judgment, which does not justify the dismissal of this case at the pleading stage.

National has no available statutory remedy, and therefore it is correct in law to resort to the actions in equity, which Art. 7 of the Civil Code of Puerto Rico wisely refers to, and is a fundamental piece of our local legal system. *See* Ap. 2647-49; 2851-55.

iv) <u>Interaction of Articles 1802 and 7 of the Civil Code</u>. Another reason the Judgement requires reconsideration is because it did not distinguish between the general duty of responsibility imposed by Art. 1802 and the specific obligation to conduct due diligence, voluntarily assumed by the defendant Banks in this case. It is evident that the defendants-appellants induced this Honorable Forum to err regarding this issue with their argument that the correct solution is to apply Art. 1802 in light of what is established in *Reyes* v. *Succession,* 98 DPR 305, 310, 313 (1970). They refer to the fact that the concept of guilt "is infinitely comprehensive, as broad and comprehensive as human behavior usually is" and "includes all kinds of human transgression in both the legal and moral order." *Id.* However, this Appellate Court cannot lose sight of the fact that the broad language of *Reyes* v. *Succession* on the concept of guilt must be understood within the entire context in which tortious liability is established in our private civil legal system, since the Supreme Court has acknowledged the limits of Article 1802 by clearly and repeatedly determining that it only applies where there is a preexisting duty to act and illicit conduct.[7]

Note that not even *Reyes v. Succession*, *supra*, or the cases cited by this Honorable Court in its Judgment, impede the harmonious interpretation of Arts. 7 and 1802, nor otherwise address in any way whether equitable claims could have been brought in such cases. However, the law must be interpreted integrally, especially codified civil regulations, for which interpretation and harmonious application is a *sine qua non* requirement. Therefore, Art. 7's reference, *supra*, to the general principles of law has a long jurisprudential trajectory in Puerto Rico law drawn from equitable foundations to pursue justice for individual cases:

> As for the great doctrines of law, these are the underlying ideas that form the basis of the law. Every system of law that deserves such a name is based on an ideal of justice, the content of which in turn depends on ethical, political and social values; and as Del Vecchio has expressed well, there must be a relationship between the general principles and the particular norms of the law--and the judicial decisions, we believe--so that among others there is no dishonesty.
>
> There is no doubt that the plaintiffs are prevented from going against their own acts. This principle, also based on ethical and equitable foundations, also permeates the law. Its application, of course, implies a decided intervention of the judicial arbitration. As Puig Brutau

[7] *See Hernández Vélez*, 168 DPR at 812-13, where it was determined that a company could not have Article 1802 liability in a sexual harassment case based on the specific facts before it, and which was cited by the TPI in the Resolution precisely in support of the proposition that Art. 1802 has limits. *Id*. at 821. Another clear example that Art. 1802 has limits is *culpa in contrahendo*, which "lacks its own regulation," applies only when certain elements are met, and "is not, therefore, about the obligation of generic diligence and erga omnes imposed by Article 1802 of the Civil Code" but rather "is an obligation towards a specific person." *Colon v. Glamorous Nails*, 167 DPR 33, 54-55 (2006).

points out, 'who has given rise to the misleading situation ... cannot make his right prevail over the right of the person who has placed his trust in that appearance.[8]

In this context, the determination and the application of the law by this Honorable Court in its Judgment is also erroneous, which is why reconsideration is warranted, since if taken literally, the previously-quoted language from *Reyes v. Sucesión* (about the scope of Art. 1802) would have rendered it impossible for the Supreme Court to ever appeal the equity—which is expressly referred to by Art. 7 and its solid doctrinal progeny—as a fundamental piece to provide an equitable remedy to an injured party. Worse yet, the judgment of this appellate forum departs from the solid and reiterated jurisprudence of our Supreme Court that clearly recognizes equitable doctrines as an autonomous source of liability. If the analysis made by this Honorable Court were correct, which we deny, then Art. 7 would be a dead letter, because all cases would be required to be resolved under Art. 1802. Let us remember the legal maxim that the legislator does not legislate without meaning. Our Highest Forum has clearly distinguished the legal nature of the duty arising from Art. 1802 in stating that it is a "generic diligence obligation and *erga omnes*". *Colón*, 167 DPR at 54. With this criterion, it precisely delimits the scope of application of liability for fault or negligence imposed by Art. 1802. Likewise, that highest Court has distinguished that sphere of tortious liability embodied in Article 1802 from the remedies in equity referred to in Art. 7 and has signaled that "[b]y definition, equity seeks justice in the individual case. It is the faithful of the balance, the unparalleled moderator of the law". *Id.* at 54 n.24.

Additionally, the Judgement by this Honorable Court dismissing this action creates a limitation on the scope of liability for the breach of an obligation contracted through a unilateral declaration of will or generated by one's own acts. The Supreme Court has **not** limited the obligatory force of such doctrines but has guided the constituent elements that activate their application, which, in the case at hand, are alleged in the complaint as required at the pleading stage. As our Supreme Court has made clear, the responsibility imposed by Article 1802 does not apply when assumptions of responsibility are invoked arising from the breach of the obligation to conduct oneself in good faith and the injured claimant does not allege that the defendant breached the obligation of *erga omnes* imposed by Article 1802 as a general obligation. That limitation on the scope of Art. 1802, is evidently no less applicable because of the alleged breach of obligations assumed through the unilateral declaration of will of the defendant Banks and through their own

[8] *Silva v. Industrial Commission*, 91 DPR 904 (1965) (citations omitted).

acts, as described in detail in the Complaint. It is clear that the Banks' equitable obligation to National does not arise from the independent duty imposed on society in general by Art. 1802 but was assumed by them through the process of requesting insurance, as the lower court correctly sustained in the Appealed Decision. (Ap. 25-26).

CONCLUSION

This Honorable Court erred in issuing the writ of *Certiorari* to overturn the lower court and dismiss the action brought under the doctrines of actos propios and unilateral declaration of will because it incorrectly concluded that the allegations arise from Art. 1802 and discarded the equitable doctrines that gives rise to the complaint in virtue of Art. 7. That mischaracterization of the complaint's allegations as ones for liability for negligence under Art. 1802 constitutes a manifest error in the Judgment, which has the fatal consequence of the dismissing this lawsuit at the pleading stage, in clear contradiction of the jurisprudence on Civil Procedure Rule 10.2 requiring that courts accept the allegations as true and examine them in the manner most favorable to the plaintiff. The Judgment of this Court essentially ignores the jurisprudence of the Supreme Court on equitable doctrines arising from Art. 7 and the effect of that erroneous interpretation is the revocation of those decisions from our highest forum.

The plaintiffs-appellees never alleged that their claims are based on an allegation of guilt or negligence; but rather that the defendant Banks failed to comply with something very specific to which they voluntarily obligated themselves with their conduct and statements: to investigate the veracity and correctness of the information contained in the Official Statements for the bond issuances. Because these are the complaint's allegations, when viewed in the manner most favorable to the party opposing dismissal, it is necessary to recognize that the lower Court did **not** err in its determination to allow discovery to proceed. Therefore, this Honorable Court has no legal basis on which to revoke the lower court's well-reasoned analysis. Accordingly, we respectfully submit that this Honorable Court failed to perform its appellate function properly, the true failure of justice is forged in its Judgment with the total impunity that it grants the defendant Banks. This relieves them of their obligation to answer before the courts of Puerto Rico for the consequences of their conduct, even though, through acts and statements contrary to good faith, they have profited to the tune of hundreds of millions of dollars, caused significant damage to the plaintiffs, and left Puerto Rico in ruins.

IN VIEW OF THE FOREGOING, the parties appearing herein very respectfully request this Honorable Court to reconsider its Judgment of December 17, 2021, and rescind the writ of certiorari or, alternatively, confirm the Appealed Decision as being correct in law.

WE CERTIFY: To have sent a copy of this request by email to: **ROBERTO C. QUIÑONES RIVERA – *rcq@mcvpr.com*; LESLIE FLORES – *lfr@mcvpr.com***; **LCDA. MYRGIA M. PALACIOS CABRERA – *mpc@mcvpr.com*; LCDO. NELSON ROBLES DÍAZ – *nroblesdiaz@gmail.com***; **LCDO. PETER G. NEIMAN – *peter.neiman@wilmerhale.com***; **LCDO. ROSS E. FIRSENBAUM – *ross.firsenbaum@wilmerhale.com***; **LCDO. BRAD E. KONSTANDT – *brad.konstandt@wilmerhale.com***; **LCDO. CHRISTOPHER D. HAMPSON – *chris.hampson@wilmerhale.com***; **LCDO. RAÚL GONZÁLEZ TORO – *rgtlaw@ymail.com***; **LCDO. LUIS R. ROMÁN NEGRÓN – *luisroman@sbgblaw.com***; **LCDO. RICHARD A. JACOBSEN – *rjacobsen@orrick.com***; **DANIEL A. RUBENS – *drubens@orrick.com***; and, **SIOBHAN CATHERINE ATKINS – *satkins@orrick.com***.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, today, January 4, 2022.

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