

T.14 § 3163

CORPORACIONES PRIVADAS

Cap. 213

§ 3163. Consecuencias de hacer negocios sin cumplir con los requisitos para hacerlo

(a) Una corporación foránea que haga negocios en el Estado Libre Asociado sin un certificado de autorización no podrá incoar ningún procedimiento en ningún tribunal del Estado Libre Asociado hasta tanto obtenga el certificado.

(b) El sucesor de una corporación foránea que hiciera negocios en el Estado Libre Asociado sin un certificado de autorización y el cesionario de una causa de acción que surgiere de esos negocios, no podrá incoar un procedimiento basado en tal causa de acción en ningún tribunal del Estado Libre Asociado hasta tanto la corporación foránea o su sucesor obtenga un certificado de autorización.

(c) Todo tribunal en el Estado Libre Asociado podrá paralizar un procedimiento incoado por una corporación foránea, su sucesor o cesionario hasta tanto se determine si la corporación foránea o su sucesor debe obtener un certificado de autorización. Si así lo determina, el tribunal podrá paralizar el procedimiento hasta tanto la corporación foránea o su sucesor obtenga el certificado.

(d) No obstante lo dispuesto en los incisos (a) y (b) de esta sección el que una corporación foránea dejare de obtener un certificado de autorización no menoscabará la validez de sus actos corporativos ni impedirá que se defienda de cualquier procedimiento en el Estado Libre Asociado.

(e) Los tribunales del Estado Libre Asociado estarán facultados para prohibir que cualquier corporación foránea o agente de la misma haga cualquier negocio o acción en el Estado Libre Asociado si dicha corporación no ha cumplido con alguna sección de este subtítulo aplicable a la misma o si dicha corporación ha obtenido un certificado del Secretario de Estado con arreglo a la sec. 3165 de este título mediante falsa representación o engaño. El Secretario de Justicia habrá de proceder por iniciativa propia o de terceros interesados presentando una querrela ante el Tribunal de Primera Instancia (Sala Superior) correspondiente a la localidad donde la corporación realice sus negocios.—Agosto 10, 1995, Núm. 144, art. 13.03, ef. Enero 1, 1996.

§ 3164. Actividades que no constituyen transacciones de negocios en el Estado Libre Asociado

(a) Las siguientes actividades, sin que la lista sea exhaustiva, no constituyen transacciones de negocios en el Estado Libre Asociado:

- (1) Entablar, defender o transigir cualquier proceso judicial;
- (2) llevar a cabo reuniones de la junta de directores o los accionistas u otras actividades relacionadas con los asuntos corporativos internos;

Cap. 213

CORP

(3) tener cuentas bancarias;
 (4) mantener oficinas o de los valores propios de la corporación con respecto a dichos valores;
 (5) vender a través de empleados o agentes o de otra persona fuera del Estado Libre Asociado;

(7) crear o adquirir derechos de inmuebles;

(8) garantizar o cobrar propiedades que garantizan;

(9) ser titular, sin más;

(10) realizar una acción dentro de los treinta (30) días y no sea una acción de rescisión.

(b) Las disposiciones de esta sección para una corporación foránea está sujeta al Estado Libre Asociado con arreglo a la ley del Estado Libre Asociado si la corporación está dedicada al Estado Libre Asociado para fijar su respectiva sec. y 8011 *et seq.* del Título 14, art. 18.04, ef. Enero 1, 1996.

§ 3165. Procedimiento para hacer negocios en el Estado Libre Asociado

(a) Toda corporación foránea que desee hacer negocios en el Estado Libre Asociado deberá presentar una solicitud en el Departamento de Justicia de la siguiente información:

- (1) El nombre de la corporación;
- (2) el nombre de la jurisdicción;
- (3) la fecha de incorporación;
- (4) la dirección física de la corporación;
- (5) la dirección de su oficina principal y el nombre del agente-residente;
- (6) los nombres y las direcciones de los directores y oficiales;
- (7) una relación de los nombres y direcciones de los accionistas.

Cap. 213

CORPORACIONES FORANEAS

T.14 § 3165

- (3) tener cuentas bancarias;
- (4) mantener oficinas o agencias para el traspaso, canje e inscripción de los valores propios de la corporación o mantener fiduciarios o depositarios con respecto a dichos valores;
- (5) vender a través de contratistas independientes;
- (6) solicitar u obtener órdenes, sea a través del correo o a través de empleados o agentes o de otra manera, si se deben aceptar tales órdenes fuera del Estado Libre Asociado antes de que surja la obligación contractual;
- (7) crear o adquirir deudas, hipotecas o garantías de bienes muebles o inmuebles;
- (8) garantizar o cobrar deudas o ejecutar hipotecas o garantías en las propiedades que garantizan las deudas;
- (9) ser titular, sin más, de bienes muebles o inmuebles;
- (10) realizar una acción aislada que se complete durante el término de treinta (30) días y no sea una de una serie de naturaleza similar.

(b) Las disposiciones de esta sección no regirán al determinar si la corporación foránea está sujeta a ser emplazada y demandada en el Estado Libre Asociado con arreglo a la sec. 3172 de este título o cualquier otra ley del Estado Libre Asociado. Tampoco regirán para determinar si una corporación está dedicada a industria o negocio en el Estado Libre Asociado para fijar su responsabilidad contributiva bajo las secs. 8001 *et seq.* y 8011 *et seq.* del Título 13, según sea el caso.—Agosto 10, 1995, Núm. 144, art. 13.04, ef. Enero 1, 1996.

§ 3165. Procedimiento para cumplir con los requisitos para hacer negocios en el Estado Libre Asociado

(a) Toda corporación foránea podrá solicitar un certificado de autorización para hacer negocios en el Estado Libre Asociado radicando una solicitud en el Departamento de Estado, en la que se consignará la siguiente información:

- (1) El nombre de la corporación foránea;
- (2) el nombre de la jurisdicción según cuyas leyes está incorporada;
- (3) la fecha de incorporación y el plazo de personalidad jurídica;
- (4) la dirección física de su domicilio corporativo;
- (5) la dirección de su oficina designada en el Estado Libre Asociado y el nombre del agente-residente en dicha oficina;
- (6) los nombres y las direcciones usuales de negocios de sus actuales directores y oficiales;
- (7) una relación de los activos y pasivos de la corporación, y

BUFETE BENNAZAR, CSP

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DATE: December 18, 1997

TIME: 10:20

FAX NO.: (202) 828-8409

SENT TO : Ms. Elizabeth R. Sachs, Esq.

FROM : José R. García Pérez, Esq.

SUBJECT : Telecellular Inc.

CLIENT : TPR FILE NO.: 5-2227

NUMBER OF PAGES (INCLUDING THIS ONE): 26

MESSAGE : Enclosed please find a letter with enclosures to be delivered to Ms. Elizabeth Sachs.

IF YOU DO NOT RECEIVE ALL PAGES, CALL (787) 754-9191 AND ASK FOR:

MERCY

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TELECELLULAR

OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION

EXHIBIT C

TELECELLULAR [Sic], INC., ET ALS

Plaintiffs-Counterclaimed

VS.

TELECELLULAR DE PUERTO RICO,
INC., ONE-TO-ONE WIRELESS, INC., SPECTRUM
MANAGEMENT GROUP, INC., SAN JUAN
PACIFIC MANAGEMENT, INC., EDWARD
NEMETH AND ROGER CRANE

Defendants-Counterclaimants

CIVIL NUM. K PE96-0263
COURT ROOM 807

RE:

PRELIMINARY AND PERMANENT
INJUNCTIONS AND DAMAGES

FINDINGS OF FACT AND LAW AND JUDGMENT BY DEFAULT

At the default hearing on the above-captioned case, held on July 15, 1997 to discuss the damages claimed by Telecellular de Puerto Rico, Inc. (TPR) in their counter claim they appeared represented by A.J. Bennazar Zequeira, Esq. and Jose R. Garcia Perez, Esq. The plaintiffs counterclaimed were represented by Benjamin Angueira Aguirre, Esq.

Before the testimony of witnesses and with consent of both parties, the court decreed in open court partial summary judgment presented by the defendants-counterclaimants and opposition submitted by the defendants that were pending adjudication in the records of this case when it was assigned to the undersigned judge.

Accordingly we determined that the defendants had clearly established that there were no dispute as to any essential fact and that as a matter of law - except awarding of damages - it was in order to hand down a partial summary judgment in favor of the plaintiffs..

At the trial, the defendants presented documentary and oral evidence consisting of the testimony of Mr. David L. Barrett, qualified expert in industrial financing and Chief Financial Officer of Telecellular de Puerto Rico, Inc.

The plaintiff cross examined Mr. David L. Barrett.

Having weighed all the evidence and for a clear and full understanding of the issues, the court formulates the following:

FINDINGS OF FACT

1. Telecellular de Puerto Rico, Inc. is a corporation organized under the laws of the State of Delaware, with offices in San Juan, Puerto Rico, that was created with the objective of developing and managing a telecommunications system in Puerto Rico.
2. The counterclaimed Caribbean Spectrum, Inc., Island SMR, Inc. and Island Digital Communications, Inc. are corporations organized under the laws of the State of Delaware with offices in San Juan, Puerto Rico.¹
3. The Federal Communications Commission (FCC) granted three licenses to the plaintiffs to operate five channels in the 800 MHz frequency band in different parts of Puerto Rico.
4. In March, 1993, another twelve (12) corporations, also organized under the laws of Delaware, each obtained three licenses from the FCC to operate five channels in the 800 MHz frequency band in different parts of Puerto Rico.

The remaining plaintiffs-counterclaimed and the other twelve (12) corporations shall be known hereinafter as "Licensees."

5. On March 21 1994, Mr. Paul Conrad signed fifteen similar documents entitled " Joint Venture Agreement" by which each Licensee agreed to join the telecommunications system proposed by TPR. In one of these documents Conrad appeared representing both contracting parties and signed twice. Conrad also signed fourteen documents in representation of Telecellular, Inc. In these documents it was identified as a "Puerto Rico Corporation".
6. In September 1994, Telecellular, Inc. was formally incorporated in Puerto Rico under the name of Telecellular de Puerto Rico, Inc. (TPR) by Paul Conrad, Edward Nemeth and Roger Crane.

¹ Through the partial judgment issued earlier in this case, the actions between the other entities that had appeared in the amended complaint and TPR were dismissed.

At the trial, it appeared that, on July 14, 1997, Telecellular, Inc. and Caribbean Spectrum, Inc. had filed for bankruptcy under Chapter 11 of the Federal Bankruptcy Code (11 U.S.C. Sec. 1 et seq.)

7. On February 15, 1995, TPR was incorporated in Delaware and in September 1995 it waived its corporate rights in Puerto Rico and requested authorization to do business in Puerto Rico as a foreign corporation. The Puerto Rico Department of State granted said authorization.
8. On February 27, 1996, TPR requested from and was granted by the FCC an Extended Implementation Grant (EIG). This grants the Licensees five years from that date to construct and operate the telecommunications system instead of the original one year term. Pursuant to the terms of the EIG, certain stages of the system had to be completed on specific dates, during those five years. It also required that TPR finish construction and put into operation at least twenty-four stations by February 27, 1998.
9. On May 26 1995, the Licensees and TPR, created a Joint Venture to establish a telecommunications network with island-wide coverage, and entered into the following contracts: Joint Venture Agreement, Construction and Management Agreement, Purchase Option Agreement, and a Licensee Investor Representation Letter (hereinafter "the documents of May 26, 1995").
10. In these documents TPR was represented by Mr. David L. Barrett or Mr. Roger Crane. The Licensees were represented by their respective directors, including Conrad, who signed on behalf of Caribbean Spectrum, Inc. All the contracting parties accepted the Joint Venture Agreement of March 1994, based on the documents of May 26, 1995 .
11. The Joint Venture Agreement specifically stipulated that the parties establish a joint venture to provide specialized mobile radio services in a Wide Area System in Puerto Rico (the "System"), including the acquisition and construction of the necessary facilities and operation of the System, once it completed.
12. The Construction and Management Agreement provided that each Licensee contract with TPR so that, with regard to the licenses FCC might grant, TPR would provide services related to planning, engineering, consulting, construction and management of the System.

13. On the other hand, the Purchase Option Agreement required that each contracting Licensee grant to TPR the right to acquire all the rights to the Specialized Mobile Radio System of that Licensee in Puerto Rico, including, but not limited to, the licenses, call signs, frequencies, and the location of said frequencies, all in exchange for twenty-five thousand (25,000) shares of TPR. Upon compliance with the contract stipulations, TPR would have entitlement to all the rights of the Licensees with regard to the System, and they, in turn, would become shareholders in TPR.

The unrefuted evidence showed that once the May 26, 1995 documents were completed, TPR made active efforts to secure the financing necessary for the development and construction of the System.

14. On September 27, 1995, negotiations to obtain financing were near completion with the granting of a loan contract. At this crucial moment, the then legal representatives of Mr. Conrad and of several Licensees wrote a letter to TPR requesting extrajudicially, among other things, that a larger share of stocks in TPR be granted to Mr. Conrad. They alleged that TPR was started up by Mr. Conrad and Mr. Edward Nemeth and that later Mr. Roger Crane had joined them as a partner.

15. The evidence clearly showed that said request was granted and negotiations were conducted that led to an agreement, by virtue of which Mr. Crane canceled a \$100,000 note due from Mr. Conrad, TPR issued 125,000 additional shares to Conrad and also paid him the amount of twenty-five thousand dollars (\$25,000) in February 1996. It was agreed that an additional \$25,000 would be paid in February 1997. It is an undisputed fact that in exchange for and in consideration of these payments, and in response to the request, Conrad and the other Licensees plaintiffs, among others, relieved TPR of all claims against TPR and they expressly agreed not to initiate any legal action to settle same.

16. After completing this transaction with Mr. Conrad and the Licensees, and as a result of other complicated negotiations, in October, 1995, TPR agreed with Ericsson, Inc. a Swedish-American company with main offices in Texas, that Ericsson, Inc. would conduct research to develop the

new equipment needed for a reliable digital cellular telecommunications system that would function in the Licensees' channels, develop it , produce it and sell it to TPR, in order for it to be used in the system.

17. In the same manner, evidence showed that TPR negotiated- and managed to secure from Ericsson, Inc.-the financing needed to purchase the equipment and construct the required physical facilities for the operation and execution.

18. The financing consisted of a bridge loan of up to two million dollars (\$2,000,000.00) to be used to commence the development of the project, until certain conditions were met for a sixty million (\$60,000,000) term loan, of which forty million dollars (\$40,000,000) were to be used for the purchase of equipment, and twenty million dollars (\$20,000,000) were to be used as working capital.

19. In October 1995, the documents for the bridge loan were executed and it was anticipated that around April 18, 1996 the long-term loan arrangements would be completed.

20. Evidence revealed that the terms of the financing were very favorable for TPR. Among other reasons, Ericsson did not require any equity in the project in exchange. Also, Ericsson would allow TPR to raise the required twenty million dollars of capital in stages during the first five years of the development of the project. Therefore, the ordinary shares that TPR had to sell to raise capital would increase in value as the project developed. This made it unnecessary to sell more TPR stock, and at the end of the process, the original investors, including the Licensees (as shareholders of TPR) would have a greater share in the total net worth of the project.

21. On the other hand, the transaction was beneficial due to the fact that the first disbursement of funds, in the long term, would produce the funds needed to pay the bridge loan to TPR. Ericsson, in its dual role as finance provider and equipment and technology provider, decided to make these investments because of its interest in introducing its new technology on the market. The TPR project was beneficial to Ericsson and they took advantage of the opportunity.

22. In October, 1995, as part of the documents required by Ericsson in order to grant the loans, each Licensee signed a Stock Security Agreement and a Consent to Collateral Assignment of Agreements recognizing and ratifying the validity of the May 26, 1995 documents. Mr. Paul Conrad appeared in the contracts representing Caribbean Spectrum, Inc. Evidence demonstrated that before March 1995, Mr. Paul Conrad knew that Mr. David L. Barrett and Mr. Roger Crane had no relationship with Telecellular, Inc., a Delaware corporation that presented the original lawsuit in this case and of which Conrad alleged being the Vice President. On the contrary, we believe that the evidence established that Mr. Conrad also knew that Mr. David Barrett was the Chief Financial Officer of TPR and that Mr. Roger Crane was its president. After an in-depth evaluation of the evidence, we concluded that Mr. Paul Conrad was not a victim of any deceit or false representation. Conrad had personal knowledge between March and October 1995, that both Barrett and Crane represented TPR and not Telecellular, Inc., a Delaware corporation.

23. Once the documents were executed and the bridge loan was granted, TPR initiated the development of the project. By April 5, 1996, TPR had contracted GTE Corporation ("GTE") a world-renowned company in the telecommunications field, to construct and develop the physical facilities needed to operate the system.

24. The evidence shows that one of the specific conditions that Ericsson required of TPR in order to approve the loan was that TPR not be subject to any legal action. However, aware of this fact the plaintiffs counterclaimed initiated the above-captioned lawsuit on April 11, 1996.

25. It is particularly significant that on April 11, 1996 the previous legal representatives of the plaintiffs, who had also represented Mr. Conrad and the Licensees in the negotiations that led to the release document of October 1995, sent letters to Ericsson, Inc. and GTE, informing them that this lawsuit had been filed. They also explained the details of the allegations contained in their petition and demanded that all existing agreements between TPR and said companies be canceled. The letters were distributed to the directors of all the Licensees.

26. It was not long before the adverse result of said action was felt. Evidence shows that on April 23, 1996, Ericsson, Inc. Declared, in writing, that TPR had defaulted on the loan contract and demanded the immediate reimbursement of the amount of one hundred twenty-one thousand dollars (\$121,000) that the defendant had not used although it had already been disbursed as part of the bridge loan. Ericsson also granted TPR until May 22, 1996 to complete the legal action related to the lawsuit, and to comply with the conditions agreed to, in that TPR would not have any legal procedures pending against Ericsson. Otherwise, Ericsson clearly stated that it would not disburse the sixty million dollars (\$60,000,000) of the long term loan and would proceed to claim the guarantees, including the licenses of the fifteen (15) Licensees and all the contractual rights of TPR.

27. By May 28, 1996, upon not complying with Ericsson's requirements, its attorneys entered a formal plea to TPR, claiming payment of the funds disbursed up to April 18, 1996. In the same manner, in a letter dated April 24, 1996, Ericsson, Inc. informed TPR that it had suspended the research, development and production of the equipment that TPR needed to implement the System.

28. Evidence patently showed that the acts of the plaintiffs-counterclaimed were the direct cause of Ericsson's not granting the long-term loan to TPR and of suspending the research, development and production of the equipment needed to operate the System. Also, compliance with the terms of the GTE contract were postponed, including the selection and contracting of sites for the location of the antennas and the construction of the stations.

29. The acts of the plaintiffs, together with the contents of their letters and the initiation of this lawsuit, caused damages to TPR, consisting of, among other things, the loss of financing, valuable time for installation of the System, loss of availability of equipment, and the technology needed to operate the System; loss of market, the opportunity to complete business transactions,

and also to establish a competitive position, higher interest costs, loss of value of the original investment, and substantial costs and economic damages.

30. The weight of the evidence indicated that the letters sent to Ericsson, Inc. and GTE and the filing of the lawsuit kept TPR from positioning itself as the third cellular telephone network in Puerto Rico and the first to offer totally digital communication services, which provides security against interceptions.

31. Unrefuted evidence shows that because of the loss of financing, due to the unavailability of equipment and technology, TPR has not been able to start construction of the System as required by the EIG, due to the fact that construction of the System did not begin in 1996 and the FCC moved forward the deadline on which TPR was to have constructed the System and put it into operation. In this regard, there is an FCC Resolution on record, granting TPR a short period that expires next November 20, 1997, to complete the construction of the project. Should TPR be able to do so, it would be the fifth or sixth cellular telephone network company in Puerto Rico.

32. On the other hand, as long as the plaintiffs-counterclaimed do not comply with their obligations as set forth in the May 26, 1995 documents, TPR will not be able to secure alternate financing that, as we had already indicated due to noncompliance with said obligations, Ericsson had withdrawn. In consequence, the project would continue to be delayed and at serious risk of being lost completely. It is evident, that having established November 20, 1997 as a deadline for designing the base, there is little time to order equipment, acquire sites for installing the bases, secure approval from ARPE, construct sites, and install the equipment as required by the FCC to enable TPR to retain the EIG it had been granted.

33. According to the evidence - at least until the trial itself- the only alternative available for carrying out the project is if the FCC grants TPR the reconsideration it had requested from the FCC in view of the unforeseen order moving up the dates, and an extension of the original terms.

34. In the present case, the unrefuted evidence presented by the defendants-counterclaimants,

established that the acts of the plaintiffs-counterclaimed as described, caused the delay of the development of the project and caused the following damages:

Interest on principal of the bridge loan (\$879,000 x 14.5% annual) as of April 18, 1997	\$125,455
Operating Costs (wages, professional fees, office rental, travel,)	\$867,300
Loss due to the inability of the project to generate revenue for one year	\$5,513,656
Total	\$6,308,411 [sic]

35. It is an indisputable fact that TPR lost the financing Ericsson had offered and had to seek an alternate that is definitely more onerous, if one considers the fact that, although the financing offered by Ericsson required that \$20,000,000 in working capital be raised , it accepted that this be done by selling 30% of the stock of the project over a period of five years. Nevertheless, the financing that could now be secured on the market called for raising an initial working capital of 20 million up front. Based on the projected value of the System, and assuming that the FCC grant the extension that will be needed to build it, this would necessarily entail offering for sale 57% of the business's ordinary stock, which represents a 27% difference in the value of the project, which would have to be conveyed or negotiated in order to obtain the same amount of financing.

36. On the other hand, the projected value of the System, based on industry standards, and on which Ericsson based its decision to originally grant financing, is \$46,200,000.00. This represents a difference of \$12,470,000 for TPR. Moreover, the financing granted by Ericsson did not require commission payments or consulting fees for brokers or financial consultants, while alternate financing obtained on the open market would, and it is calculated at 2% of \$1,600,000. Therefore, if new financing is obtained, it will cost TPR \$14,070,000 more than the original financing granted initially by Ericsson, which is no longer available.

37. The Court determines that the damages for delay in the development of the project and loss of financing from Ericsson amount to fifteen million dollars.

38. In the same manner if no new financing is obtained, or if FCC does not reconsider and extend the deadlines for completing the construction of the physical facilities of the System, the EIG and the licenses to operate the System will expire and the project will be completely lost. As a result, TPR would lose \$46,200,000 of the current value of the project, as unquestionable demonstrated by the evidence.

Based on the above Findings of Fact, the court formulates the following:

LEGAL CONCLUSIONS

1. In the above captioned case, except for the aspect of damages, partial summary judgment was pronounced, since there exists no real substantial controversy as to any of the material facts, and as a matter of law, sentence should be pronounced in favor of the plaintiffs. Consejo de Titulares v. M.G.I.C. Financial, 1991, CA. 91050; Mercado Vega v. UPR; CA. 91-39.
2. As we had pointed out, the plaintiffs-counterclaimed presented no defense against any of the allegations of the counterclaim filed by TPR. Nor did they submit any evidence or statements that in any way would establish a dispute or controversy against the request for partial summary sentence requested by TPR.
3. On the other hand, the record is totally devoid of any evidence that shows that the fraud as alleged in the complaint is that to the effect that the Licensees were represented as contracting with one entity when they were actually contracting with another. Evidently, Paul Conrad was a promoter of the project from the beginning, and had full knowledge of everything that was going on, and knowingly participated in a scheme in which he himself was the victim and contributed to creating a deceiving situation. The Court concludes that the documents of May 26, 1995, are valid and that the contributions mutually agreed to are binding for the parties, and are in full force and oblige all parties to specific compliance with everything therein stipulated.

The supposed error that the Licensees allege is not legally sufficient to invalidate the contracts, because same were executed for the development of a wireless communications System and not to identify the corporation with which they contracted or its particular attributes.

4. The undisputed evidence demonstrated that the documents of May 26, 1995 were signed and ratified under circumstances that show no doubt that there was consent, of object and cause required for their validity.

5. The rest of the plaintiffs-counterclaimed also respond to TPR, since the obligations set forth in the contracts have force of law between the contracting parties and must be complied with pursuant to same Civil Code, 1930 , Art. 1044, 31 L.P.R. A. , Sec. 2994. The contacts are binding not only with regard to the fulfillment of the contractual obligations but to also to all the consequences that, according to their nature, are in agreement with good faith. Ramirez v. Club Cala de Palmas, 123 D.P.R. 339 to 347 (1989). The remaining plaintiffs- counterclaimed did not fulfill their contractual obligations with TPR, thus contributing to the damages suffered by TPR.

6. Article 1077 of the Civil Code, 31 L. P. R. A. 3057, applies to the current case, granting to the aggrieved party the option of specific compliance with the obligations, if the appropriate contribution is still possible. The refusal of the remaining plaintiffs-counterclaimed to comply with what they agreed to in the Purchase Option Agreement, of transferring to TPR their interest in the mobile radio system in Puerto Rico, including the licenses granted by the FCC, subject to its approval, in exchange for stock in TPR. TPR has the right to exercise appropriate actions to validate its right to the transfer and the remaining plaintiffs-counterclaimed must execute the transfer.

In light of the foregoing Findings of Fact and Law, the court orders the following:

Judgment

The amended lawsuit is dismissed and the counter claim is granted.

Caribbean Spectrum, Inc. Island SMR, Inc., and Island Digital Communications, Inc. are liable in solido to TPR for the damages they have caused. We also declare the documents of May 26, 1995 to be valid and in full force and binding on all parties to the terms therein agreed upon. Therefore, the court orders Caribbean Spectrum, Inc. , Island SMR, Inc. and Island Digital Communications, Inc. to comply specifically with the documents of May 26, 1995, and, particularly, to the respective Director of each of these corporations, that in a period of time not to exceed ten (10) days, he sign all the necessary documents, in name of the Licensee he represents, to transfer to TPR the interest the Licensee might have in the specialized mobile radio system (SMR) in Puerto Rico; in exchange for this, TPR shall issue 25,000 ordinary shares once the transfer is approved by the Federal Communications Commission. The Marshall of the Superior Court of San Juan of the Court of the First Instance is hereby authorized, without the need for any further order to the effect, to grant said documents of transfer, on behalf of and in representation of each of said entities, if their respective Director or any of them fails to do so in the next ten (10) days.

The court orders Island SMR, Inc. and Island Digital Communications, Inc. to pay, jointly and severally, the sum of \$15,000,000 to TPR for the damages previously described.

The claim for damages made by TPR against Caribbean Spectrum, Inc. is dismissed without prejudice and only for statistical purposes so that same may be considered if the bankruptcy is dismissed by the federal court.

REGISTER AND NOTIFY

In San Juan, Puerto Rico October 23, 1997.

(Signed)
C. HEYDEE PAGANI PADRO
JUDGE SUPERIOR COURT

[Handwritten: Illegible ... Carmen L. Lopez
Deputy Clerk
For: M. Rosa

[Initials appear in left margin of
each page of the document]

TELECELLULAR

OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION

EXHIBIT D

Federal Communications Commission

1270 Fairfield Road
Gettysburg, PA 17325-7245

In Reply Refer To:
7110-181

SEP 0 5 1995

Elizabeth R. Sachs
Lukas, McGowan, Nace & Gutierrez
1111 Nineteenth Street, N.W.
Suite 1200
Washington, DC 20036

Dear Ms. Sachs:

This is in regard to your letter dated July 20, 1995, on behalf of Dan Dorough, which requests a waiver of Rule 90.631(e) and (f), to extend the time in which 800 MHz Trunked SMR station WFFF715 must be constructed.

The Commission database records indicate station WFFF715 was issued to Dan Dorough on July 28, 1994. Rules 90.631(e) and (f) requires a station be placed into operation within one year, except as provided in 90.629, or its license cancels automatically and must be returned to the Commission. The construction deadline for station WFFF715 was July 28, 1995. The request states an extension is required because the site owner, City of San Clemente, informed the licensee that site renovations had taken substantially longer than scheduled. The request states Dan Dorough (Dorough) contracted with Fisher Communications (Fisher) to manage the station on his behalf. Fisher Communications contacted the City of San Clemente (The City) in January 1995. The City confirmed site availability at this time and informed Fisher of the upgrading and renovations being performed to expand the facility. The City anticipated the renovations being completed by Dorough's construction deadline. Fisher Communications ordered and received the equipment on June 26, 1995. When Fisher Communications contacted City of San Clemente regarding the construction of the station, Fisher was informed that the renovations were not complete. The City indicated they would not be able to accommodate Dorough's system until September, 1995. Fisher Communications, immediately upon being notified of the incomplete renovation project by the City, tried to relocate this station to another site. Dorough's station was issued offset frequencies because of its proximity to the Mexican border. Relocating a station with this type frequency was virtually impossible because of the terrain and the Commission's mileage separation requirements between co-channel systems (See Rule 90.621). Nextel Communications Inc., a competitive SMR operator, was contacted regarding site availability but it could not accommodate the system because of its own operations.

Rule 90.167(c) states that extensions of time must be filed prior to the expiration of the construction period and that no extension will be granted for delays caused by lack of financing, lack of site availability, or for failure to timely order equipment. However, Dan Dorough has made a diligent attempt to timely construct the system. The delay in renovations by the City of Clemente was due to circumstances beyond the control of the

licensee. Therefore, the Commission will allow Dan Dorough until September 28, 1995, to fully implement his radio station. If the station is not constructed and operational by that date, authority for any portion not constructed and operational will automatically cancel.

Please keep a copy of this letter with your stations records.

Sincerely,


for Terry L. Fishel
Chief, Land Mobile Branch

cc: Kathy Garland, Chief
Consumer Assistance Branch

CERTIFICATION

On behalf of TELECELLULAR, the undersigned manager for TELECELLULAR hereby certifies under penalty of perjury, that the following is true and correct:

1. That I have read the attached "Opposition to Petition for Partial Reconsideration";
2. That all of the information contained therein is true and correct to the best of my knowledge, information and belief.

TELECELLULAR, a joint venture by:

Telecellular de Puerto Rico, Inc., Manager



Roger Cranc, President

1/7/98
Date

CERTIFICATION

On behalf of TELECELLULAR, the undersigned manager for TELECELLULAR hereby certifies under penalty of perjury, that the following is true and correct:

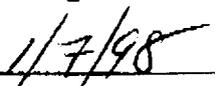
- 3. That I have read the attached "Opposition to Petition for Partial Reconsideration";
- 4. That all of the information contained therein is true and correct to the best of my knowledge, information and belief.

TELECELLULAR, a joint venture by:

Telecellular de Puerto Rico, Inc., Manager



Ed Nemeth, Chairman



Date

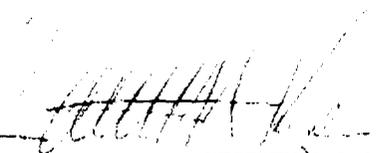
CERTIFICATION

On behalf of TELECELLULAR, the undersigned manager for TELECELLULAR hereby certifies under penalty of perjury, that the following is true and correct:

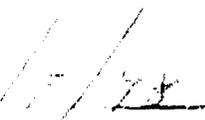
- 5. That I have read the attached "Opposition to Petition for Partial Reconsideration".
- 6. That all of the information contained therein is true and correct to the best of my knowledge, information and belief.

CARIBBEAN DIGITAL COMMUNICATIONS, INC

Participating Licensee of TELECELLULAR



 José Vizcarrondo, Director



 Date

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this January 7, 1998, caused to be hand delivered a copy of the foregoing Opposition to Petition for Partial Reconsideration to the following:

Daniel Phythyon, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

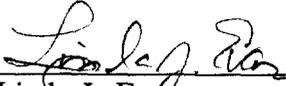
Rosalind K. Allen, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

David Furth, Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2100 M Street, N.W.
7th Floor, Room 24
Washington, D.C. 20554

Ramona Melson, Chief
Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2100 M Street, N.W.
7th Floor, Rm. 101A
Washington, D.C. 20554

*Terry L. Fishel, Chief
Land Mobile Branch
Division of Operations
Wireless Telecommunications Bureau
Federal Communications Commission
1270 Fairfield Road
Gettysburg, PA 17325

**Alan S. Tilles, Esq.
Meyer, Faller, Weisman &
Rosenberg, P.C.
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015
Counsel for North Sight
Communications, Inc.



Linda J. Evans

*Via Federal Express on 1/8/98

**Via First Class Mail