

48928

DEPT. OF TRANSPORTATION
DOCKET SECTION

BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

98 DEC 23 PM 4:27

Application of

AEROPOSTAL ALAS DE VENEZUELA, C.A.

: Docket OST-98-4917 -2

for an exemption from 49 U.S.C. § 41301
(Venezuela-Dallas/Houston;
U.S.-Venezuela Code-Sharing)

Application of

AMERICAN AIRLINES INC.

: Docket OST-98-4911 -3

for an exemption (U.S.-Venezuela
points; Code-sharing with Aeropostal
Alas de Venezuela, CA.)

Joint Application of

AMERICAN AIRLINES, INC.
AEROPOSTAL ALAS DE VENEZUELA, CA.

: Undocketed

for Statements of Authorization
Under 14 CFR Part 212

CONSOLIDATED ANSWER OF ALAS INTERNATIONAL LIMITED

Communications with respect to
this document should be sent to:

David L. Massie
Alas International Limited
PO Box 250
Guinness Flight House
St. Peter Port, Guernsey
British Channel Islands GY1 3QH

December 22, 1998

BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Application of

AEROPOSTAL ALAS DE VENEZUELA CA.

: Docket OST-98-4917

for an exemption from 49 U.S.C. § 41301
(Venezuela-Dallas/Houston;
U.S.-Venezuela Code-Sharing)

Application of

AMERICAN AIRLINES INC.

: Docket OST-98-49 11

for an exemption (US-Venezuela
points; Code-sharing with Aeropostal
Alas de Venezuela, CA.)

Joint Application of

AMERICAN AIRLINES, INC.
AEROPOSTAL ALAS DE VENEZUELA, C.A.

: Undocketed

for Statements of Authorization
Under 14 CFR Part 2 12

CONSOLIDATED ANSWER OF ALAS INTERNATIONAL LIMITED

Introduction

Alas International Limited (“Alas International”) opposes the captioned applications, which involve a proposed code-sharing arrangement between American Airlines, Inc. and Aeropostal Alas de Venezuela (“Aeropostal”). As set forth below, the aircraft being operated by Aeropostal for domestic routes within Venezuela that would be included in the code-sharing

arrangement are the subject of litigation in New York (New York State Supreme Court, County of New York Index No. 601817-97) which has reached an advanced stage. In the litigation there are disputes as to ownership of the aircraft, and the principals of Aeropostal, Mr. Nelson Ramiz (“Ramiz”) and his wife Mrs. Haydhelen Velasquez Morales (“Velasquez”), are the subject of a finding in the New York Courts that they breached their fiduciary duties to transfer title and possession to said aircraft to Alas International and failed to return monies advanced to them by Alas International. Alas International claims to be entitled to ownership and possession of the aircraft. Consequently, it is not in the public interest to permit a code-sharing arrangement that would entail sales of tickets for passage on aircraft as to which Aeropostal’s ability to control the aircraft is in serious doubt.

The Legal Proceedings

The Court has recently granted partial summary judgment in favor of Alas International. A copy of the decision and order is attached hereto as Exhibit 1. The named owner of Aeropostal, filed with the DOT, is **Corporacion** Alas de Venezuela (“CAV”), (allegedly) controlled by Velasquez, although her husband, Ramiz, is the driving force behind such. Among other things, the New York Court held that Velasquez and Ramiz had taken US\$21 million provided by Alas International (a corporation 36.66% owned by US citizens) and had used those funds to acquire nine DC-9 aircraft, three spare engines and other assets and to capitalize CAV. In particular, despite personally accepting express contractual obligations and fiduciary duty to Alas International, Ramiz and Velasquez failed to implement any of the principal terms of the contract between them and Alas International including transferring title to the aircraft to Alas International and returning other monies due to Alas International. The Court held that Ramiz and Velasquez breached their fiduciary duty to Alas International with respect to nine DC-9

aircraft currently being operated in Aeropostal's fleet and has ordered an accounting. In addition, despite Aeropostal's express statement in its Application for Exemption to the DOT that Alas International was the 49% owner of CAV,¹ Ramiz and Velasquez contested this in the New York Court and the Court had to enter a declaratory judgment that Alas International is the 49% owner of CAV which is the parent corporation of Aeropostal

Background

The foregoing events are set forth in the Court's decision (Exhibit 1) and other papers on file in the lawsuit attached hereto as follows: complaint - Exhibit 2; defendants' answer - Exhibit 3; amended answer filed by Velasquez - Exhibit 4; reply to counterclaims - Exhibit 5.

The background is that Alas International entered into a transaction in September, 1996 with CAV, Ramiz and Velasquez (who are now the president and chief operating officer, respectively, of Aeropostal) whereby **Alas International furnished** \$21 million for the acquisition of nine DC-9 aircraft, three spare engines, and other assets from the bankruptcy receivers of the old Aeropostal airline in Venezuela. The transaction was governed by a written document known as a Memorandum of Understanding ("MOW"), which required that title to and possession of the aircraft and other assets be transferred to Alas International by a staggered delivery schedule, concluding by the end of November, 1996.

While Alas International supplied the \$21 million and performed all of its obligations under the MOU, the aircraft and other assets have never been delivered to it. Aeropostal has operated and continues to operate the aircraft in revenue producing service. We understand that the nine DC-9 aircraft represent a majority of Aeropostal's fleet. Neither Aeropostal, nor CAV,

¹ Application for Exemption **and/or** Transfer of Exemption Authority and Motion to Shorten the Answer Period dated April 24, 1998, Docket OST-98-3770-1 at Exhibit AAVJ.

nor Ramiz or Velasquez have paid any rent, or other consideration to Alas International for the use of the aircraft and other assets, nor have they paid principal or interest in respect of the \$21 million. Simply speaking they have taken the assets and cash for their own use and benefit and must now account for such to the New York Courts.

Indeed, Aeropostal's original application for exemption omits material information: Although it disclosed the use of the nine DC-9 aircraft,² it failed to disclose that its rights to such aircraft (for which it has never paid a penny) was in serious dispute.

Although Ramiz and Velasquez accepted fiduciary duties to Alas International (as confirmed by the Court's judgment) with respect to the DC-9 aircraft, they have never sought or obtained the consent of their fiduciary beneficiary, Alas International, for the present operation of the aircraft. Moreover, they did not seek or obtain the consent of Alas International with respect to the proposed code-sharing arrangement, although it will apparently involve the use of the disputed DC-9 aircraft for connecting flight segments within Venezuela. **This failure is of special concern because the code-sharing arrangement was entered into on November 20, 1998, after the Court's decision holding that Ramiz and Velasquez are fiduciaries for Alas International.**

We also bring to your attention that Aeropostal's statement in its present Application for Exemption Authority (at ¶ 4) that "the factors which supported those findings [i.e. prior DOT finding that Aeropostal is operationally and financially qualified and fit to conduct operations between specified points in Venezuela and the United States] have not changed," is not accurate in light of the Court's decision which raises serious questions about Aeropostal's continued ability to control the nine DC-9 aircraft in its fleet.

² *Id.* at ¶ 3.

Moreover, Aeropostal's original Application for Exemption apparently contained a number of other inaccuracies which **now** warrant investigation by the DOT in light of the greatly expanded authority now sought by Aeropostal:

- Aeropostal stated that "Pursuant to a Government restructuring of the company under Venezuelan law, certain of the assets of LAV [the former entity that operated a Venezuelan airline under the Aeropostal **name**](including, *inter alia*, the 'Aeropostal' name, the operating certificates and the DC-9 fleet) were offered for sale and transferred to the Applicant [Aeropostal] **herein**."³ This statement misleadingly implies that Aeropostal paid consideration for and now owns the aircraft, when that is just not true. Our understanding is that the record owner of the aircraft is CAV, not Aeropostal, and in any event the "transfer" to Aeropostal via CAV is under a serious cloud in light of the findings of the New York Court.
- Although Velasquez held herself out as "President" of Aeropostal and one of its "managers,"⁴ in the New York litigation she tiled an affidavit in which she stated that she relied primarily on her husband, Ramiz, who is an American citizen. Thus, the statement that Aeropostal is "owned and effectively controlled by citizens of **Venezuela**"⁵ deserves thorough investigation, Aeropostal stated that Ramiz and Velasquez reside in **Venezuela**.⁶ In the New York litigation they both alleged that they reside in Miami, **Florida**.⁷

³ *Id.* at ¶ 2.

⁴ *Id.* at Exhibit AAV-4, p. 2 of 14.

⁵ *Id.* at Exhibit AAV-4, p. 3 of 14.

⁶ *Id.* at Exhibit AAV-4, p. 3 of 14.

⁷ See Exhibit 3 hereto, at ¶¶ 71-72.

- Aeropostal stated that its shares were 51% owned directly by Velasquez and 49% by CAV.⁸ Alas International understands that Aeropostal is 100% owned by CAV.
- Aeropostal presented what purported to be a balance sheet and income statement for the period ending December 31, 1997, which purported to show a profit for that year.⁹
But, the **financials** do not reflect any payment or accrual for rent for the DC-9 aircraft.

Furthermore, we understand that criminal investigations of Velasquez and Ramiz are pending in Venezuela in connection with the acquisition of the DC-9 aircraft and other assets, and that Ramiz is a fugitive from the Dominican Republic where he is wanted to face charges of fraud (see Exhibit 6 hereto).

Conclusion

In view of these facts, we submit that it would not be in the public interest for the Department to grant the authorization as requested: the code-sharing arrangement would include sale by American Airlines in the United States of tickets to U.S. citizens for passage on connecting flights solely within Venezuela which are presently served by the DC-9 aircraft that are the subject of the above-described litigation. If Alas International succeeds in the litigation, it would result in it obtaining control of the aircraft that are serving some of the routes included within the proposed code-sharing arrangement. (Although Alas International might choose to operate some or all of such aircraft within Venezuela, they would not necessarily be operated under the control of Aeropostal.) Moreover, it appears that the DOT was seriously deceived in

⁸ Application for Exemption, *supra* note 1 at Exhibit AAV-5

⁹ *Id.* at Exhibit AAV-13.

- connection with Aeropostal's original Application for Exemption, and a thorough investigation is warranted.

- December 22, 1998

- Respectfully submitted,

Alas International Limited

By: David L. Massie

- PO Box 250

- Guinness Flight House

- St. Peter Port, Guernsey

- British Channel Islands GY1 3QH

CERTIFICATE OF SERVICE

I hereby certify that I have on this date caused to serve a copy of the foregoing pleading upon the persons included on the attached service list in accordance with the Department's regulations.


ANNA JOHNSON

December 22, 1998

SERVICE LIST

Allan W. Markham
2133 36th Street, N.W.
Washington, D.C. 20007

R. Bruce Keiner
Crowell & Moring
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Robert E. Cohn
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037

Jeffrey A. Manley
Kirkland & Ellis
655 15th Street, N.W.
Washington, D.C. 20005

Robert P. Silverberg
Bagileo, Silverberg & Goldman, LLP
1101 30th Street, N.W.
Suite 120
Washington, D.C. 20007

Suzette Matthews
Bernstein & Matthews
5649 John Barton Payne Rd.
Marshall, VA 22115

Nathaniel P. Breed, Jr.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037

John L. Richardson
Seeger, Potter, Richardson, Luxton, Joselow & Brooks
2121 K Street, N.W.
Suite 700
Washington, D.C. 20037

William H. Callaway, Jr.
Zuckert, Scoutt & Rasenberger, L.L.P.
888 17th Street, N.W.
Washington, D.C. 20006

Bruce H. Rabinowitz
Kirkland & Ellis
655 15th Street, N.W.
Washington, D.C. 20005

Jeffrey N. Shane
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037

Roger Fones
Antitrust Division
Department of Justice
325 7th Street, N.W.
Suite 500
Washington, D.C. 20530

Marshall S. Sinick
Squire, Sanders & Dempsey, LLP
1201 Pennsylvania Ave., N.W.
Suite 400
Washington, D.C. 20004

Pierre Murphy
2445 M Street, N.W.
Suite 260
Washington, D.C. 20037

U.S. Transcom/TCJ5
Attn: Air Mobility Analysis
608 Scott Drive
Scott AFB, IL 62225

Joshua I. Romanow, Esq.
Winthrop, Stimson, Putnam & Roberts
1133 Connecticut Ave., N.W.
Suite 1200
Washington, D.C. 20036

Arnold J. Grossman
Vice President International Affairs
American Airlines, Inc.
P.O. Box 619616, MD 5635
DFW Airport, TX 75261

Carl Nelson, Jr.
Associate General Counsel
American Airlines, Inc.
1101 17th Street, N.W., #600
Washington, D.C. 20036

Gerard J. Arpey
Senior Vice President - Finance and Planning
and Chief Financial Officer
American Airlines, Inc.
P.O. Box 619616, MD 5621
DFW Airport, TX 75261

William K. Ris, Jr.
Vice President - Government Affairs
American Airlines, Inc.
1101 17th Street, N.W.
Suite 600
Washington, D.C. 20036

Hershel Kamen
Continental Airlines
2929 Allen Parkway, Suite 1923
Houston, TX 77019

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: Hon. Charles Edward Ramos

PART 53

Justice

Alas Inter
- v -
Ramos vs et al
Deno et al

INDEX NO.

C-6018179

MOTION DATE

MOTION SEQ. NO.

011

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause – Affidavits – Exhibits . . .	_____
Answering Affidavits – Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion: Yes No

Upon the foregoing Papers, it is ordered that this motion

is decided in accordance with accompanying memorandum decision and order.

MOTION/CASE IS RESPECTFULLY REFERRED TO

JUSTICE

DATED: _____

J.S.C.

Dated: 11/2/88

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

J.S.C.

9

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 53

-----X
ALAS INTERNATIONAL LIMITED,

Plaintiff,

-against-

NELSON **RAMIZ**, HAYDHELM EMILIA
VELASQUEZ MORALES, and CORPORACION ALAS
DE VENEZUELA, C.A.,

Defendants,

Index No.

-against-

601817/97

ZADIK BINO, DAVID MASSSIE, ELDAD **BEN-**
YOSEF, FRANKLIN HOET, BENTATA, HOET &
ASSOCIATES, AERON AVIATION RESOURCES,
INC., EBY CAPITAL, INC. and GALACTIC
ENTERPRISES LTD.,

Counterclaim Defendants.

-----X
CHARLES EDWARD **RAMOS**, J.S.C.:

Plaintiff moves (seq. no. 011) for partial summary judgment on the issue of liability, the imposition of a constructive trust, the appointment of a temporary receiver, an accounting and a declaratory judgment

BACKGROUND

Plaintiff brings this action for breach of contract and breach of fiduciary duty and is seeking damages, injunctive relief, specific performance, a constructive trust and a declaratory judgment. Plaintiff alleges the following: Plaintiff is a corporation incorporated under the laws of the Virgin Islands and experienced in international commercial aviation transactions. In August 1996, defendant Nelson Ramiz ("Ramiz") approached counterclaim defendant Eldad Ben-Yosef ("Ben-Yosef"),

the owner of counterclaim defendants Aeron Aviation Resources, Inc. ("**Aeron**") and EBY Capital, Inc. ("**EBY**"), concerning the possible acquisition of the assets of **Linea** Aeropostal Venezolana, C.A. ("Aeropostal"), a bankrupt Venezuelan airline. Aeropostal had ceased operations and its assets were controlled by court-appointed receivers who planned to sell them at an auction. Ramiz explained that these assets would likely be purchased for the minimum bid of \$20 million as required by the court. Ramiz also explained that the purchaser of the assets had to be a Venezuelan company, and that his wife, defendant Haydhelm Emilia Velasquez Morales ("**Velasquez**"), owned 100% of defendant **Corporacion** Alas de Venezuela, C.A. ("**Alas Venezuela**"), and that Alas Venezuela could act as the nominal purchaser of the assets. Ben-Yosef in turn enlisted the assistance of counterclaim defendant Galactic Enterprises ("**Galactic**") through counterclaim defendant David Massie ("**Massie**"), whose family trust is part owner of Galactic. Ben-Yosef and Galactic decided to structure the acquisition through plaintiff, with Ben-Yosef and **Glactic** as indirect controlling owners of plaintiff.

On September 12, 1996, after a \$1 million deposit had been advanced by Galactic to Ramiz in order to secure a potential bid in the auction of the assets (the deposit was given to the **court-**appointed receivers), plaintiff was informed by John Pate, who was retained as counsel for plaintiff and defendants, that the \$1 million could not be used as part of the \$20 million purchase price, but was instead to be retained by the receivers for 45

days following the closing of the purchase of the assets to secure various other obligations. Therefore, plaintiff would be required to provide a total of \$21 million to Alas Venezuela in order to close the transaction.

Plaintiffs and defendants entered into a Memorandum of Understanding ("MOU"), dated September 26, 1996. The MOU set forth the terms under which the parties would participate in the acquisition of the assets. Such assets consisted of, among other things, nine DC-9 aircraft, each fitted with two Pratt & Whitney -17 engines, three spare Pratt & Whitney engines, various spare parts, tools and maintenance equipment, office equipment and the rights to the name "Aeropostal."

The MOU stated that the assets would be acquired by Alas Venezuela from the court-appointed receivers with \$20 million advanced by Galactic, with title held for a short period by Alas Venezuela, and the assets then being transferred to plaintiff. Ramiz would be compensated for his efforts in the transaction with 5% of the ownership of plaintiff. Ramiz and Alas Venezuela were obligated under the MOU to indemnify plaintiff against the non-return of the \$1 million deposit. Plaintiff was to own 49% of Alas Venezuela and Ramiz and/or Velasquez was to own the remainder. The MOU also stated that the parties could lease, or otherwise make available, some of the assets to Alas Venezuela for the purpose of enabling Alas Venezuela to start and operate a new airline in Venezuela.

In Paragraph 2 of the MOU, Ramiz, Velasquez and Alas

Venezuela "jointly and severally" agreed, upon the successful purchase of the assets by Alas Venezuela, to transfer all rights in and title to such assets to plaintiff. Paragraph 4 required Ramiz and Velasquez to take all actions necessary to make plaintiff the beneficial owner of 49% of the outstanding shares of Alas Venezuela. Paragraph 9 of the MOU provided that upon purchase of the assets by Alas Venezuela, rights with respect to the \$1 million deposit "shall be transferred to Alas International (plaintiff) with a value date for the purposes of calculating interest of 29 August 1996 . . . " Alas Venezuela was also obligated under Paragraph 14 to enter into "security documentation" evidencing its obligation to secure the \$21 million advanced by plaintiff with the assets as collateral. The obligation of Alas Venezuela to repay the \$21 million is evidenced by a Facility Letter dated September 27, 1996 from plaintiff to Alas Venezuela, which provides that the \$21 million, plus interest and fees, is repayable on demand.

A handwritten rider, initialed by all of the signatories to the MOU and appearing in Schedule 2 of the MOU, states that:

...for the avoidance of doubt the transfer of title of the aircraft and other assets to Alas International shall operate to pay in part the debt incurred of \$21 million as to \$20 million. The balance of \$1 million is expected to be repaid pursuant to provision 13 (of the MOU) and the \$20 million by transfer of all (assets). Upon completion of such transfers the Loan Agreement evidencing such debt shall be deemed canceled and of no further force or effect.

Paragraph 17 of the MOU imposed fiduciary duties on Ramiz and Velasquez with respect to plaintiff.

Alas Venezuela purchased the assets from the receivers in an

auction that took place on September 27, 1997. Alas Venezuela persuaded plaintiff to execute mortgages on the assets, said mortgages to be recorded against the assets, protecting plaintiff's interest in the assets.

The receiver returned the \$1 million deposit to defendants. Instead of transferring title of the assets to plaintiff, defendants have leased the assets to a subsidiary of Alas Venezuela for the purpose of operating an airline. Plaintiff claims that while using the assets in revenue producing operations, defendants have not paid for their ownership of the assets. Plaintiff also claims that it has not been able to lease the assets to a Columbian client because plaintiff does not have possession of the assets.

Plaintiff has demanded that: (1) Alas Venezuela repay the \$1 million and that Ramiz and Alas Venezuela honor their obligation to indemnify plaintiff against the non-return of the \$1 million; (2) Ramiz, Velasquez and Alas Venezuela transfer all rights in and title to the assets to plaintiff; (3) Ramiz and Velasquez take whatever action necessary to make plaintiff a 49% shareholder of Alas Venezuela; (4) Alas Venezuela execute a mortgage securing the \$21 million advanced by plaintiff with the assets as collateral; and (5) Alas Venezuela, Ramiz and Velasquez hold for the benefit of plaintiff all income or other benefits generated by the use of the \$1 million and certain assets. Such demands have not been honored, prompting this lawsuit.

In response to the commencement of this action, defendants

do not dispute the fact that they entered into an agreement with plaintiff to purchase the subject assets from the court-appointed receivers. Defendants contend that the condition for the sale of the assets was that the purchaser would agree to use the assets to operate a domestic airline in Venezuela, as opposed to selling or leasing the assets outside of Venezuela. The bid documents published by the Bankruptcy court in Venezuela provide that, as a condition to bidding for the assets, the successful bidder would have to:

...accept and commit, in case of winning the bid, to stipulate in the public sale document for the aircraft and engines that form part of the assets that the owner to whom the property rights over said assets are conveyed is obligated to dedicate them within the period of thirty (30) days from the date of said public document to form part of the operation of a national, commercial, regular, domestic airline for the public transportation of people, freight and mail in accordance with the requirements for service based on the national domestic demand and other terms and conditions established by the Ministry of Transportation and Communications in the respective operating permits.

Defendants contend that Ben-Yosef and Massie represented to them and various representatives of the Venezuelan Government, including the Minister of Transportation and Communications, that they would dedicate the assets to the operation of a domestic airline in Venezuela.

Upon the sale of the assets, plaintiff and various counterclaim defendants demanded that defendants give them immediate title and possession of the assets. Upon defendants' failure to do so, plaintiff and the counterclaim defendants allegedly proceeded to harass and intimidate defendants through a

series of acts, including the publication of allegedly defamatory advertisements in Venezuelan newspapers against Alas Venezuela and the commencement of civil and criminal lawsuits against defendants in the courts of Venezuela. These acts are the basis of several tort counterclaims brought by defendants against plaintiff and the counterclaim defendants.

Pursuant to the MOU, Ramiz presented a business plan to plaintiff as part of his attempt to operate the airline. According to defendants, Ben-Yosef, on behalf of plaintiff, improperly rejected the plan in an effort to prevent defendants from operating the airline.

In addition, defendants argue that the actions of the Venezuelan Government prevented them from transferring title and possession of the assets to plaintiff. The parties allegedly were aware that the Ministry of Transportation and Communications had the power to register and de-register aircraft, record encumbrances on them, and allow or refuse their de-registration and export from Venezuela. Defendants claim that the political climate in Venezuela made it an inescapable fact that public sentiment was favorable to the use of the subject assets for the operation of a domestic airline rather than for their exportation.

Defendants contend that they were prevented from transferring title to certain assets because of encumbrances on the aircraft in favor of **Banco Industrial de Venezuela ("BIV")** and the Fondo de Inversiones de Venezuela which needed to be

satisfied and canceled following payment of the purchase price for the assets. In addition, the receivers allegedly delayed approving certain documentation due to a dispute among themselves. A court workers strike and the **recusal** of the Bankruptcy Court judge delayed the attempt to remove the encumbrances on the assets. To this date, title was never transferred to plaintiff.

SUMMARY JUDGMENT

Plaintiff moves for summary judgment on liability with respect to its breach of contract and breach of fiduciary duty claims. It argues that defendants breached the MOU by failing to transfer title of the assets to plaintiff, by failing to transfer 49% of the shares of Alas Venezuela to plaintiff and by failing to repay the \$21 million, or pay any rent for use of the assets. Plaintiff argues that Ramiz and Velasquez breached fiduciary duties to plaintiff which were expressly stated in the MOU by specifically failing to maintain and transfer the assets to plaintiff. These defendants allegedly have failed to provide plaintiff with information about the financial condition of the assets. Plaintiff considers the assets to be trust property administered by Ramiz and Velasquez in plaintiff's interest.

Defendants oppose summary judgment on several grounds. They claim that they were fraudulently induced into entering the MOU because plaintiff's representative represented that the assets would be purchased for the purpose of operating an airline in Venezuela. Defendants also claim that the MOU is ambiguous and

incomplete, and cannot be interpreted without also considering the terms of the Facility Letter. Defendants assert that plaintiff repudiated the MOU when it refused to agree to **Ramiz's** business plan, or lease aircraft to him for the purpose of operating an airline. Defendants also assert that the actions of the Venezuelan Government rendered impossible any attempt to transfer the assets out of Venezuela. Defendants deny that **Ramiz** and Velasquez are fiduciaries of plaintiff and that the MOU renders them, at most, debtors in a business transaction.

Defendants believe that summary judgment should be precluded pending a trial of the counterclaims which alleges additional wrongdoing by plaintiff and the counterclaim defendants.

On a prior motion, this court dismissed these particular counterclaims without prejudice on the ground that defendants move for leave to amend the answer to include the specific Venezuelan law applicable to the counterclaims. To date, defendants have not moved for leave.

When the meaning of a contract is plain and clear, it is entitled to be enforced according to its terms and not to be subverted by straining to find an ambiguity which otherwise might not be thought to exist. Uribe v Merchants Bank of New York, 91 NY2d 336 (1998). The task of the court is to enforce the plain meaning of an unambiguous agreement, rather than to accept a construction that would render a purposeful provision of a contract meaningless. Bluebird Partners. L.P. v First Fidelity

Bank, N.A., New Jersey, - AD2d - ,671 N.Y.S. 2d 7 (1st Dept 1998). A proper inquiry in determining whether a contract is ambiguous is whether the agreement on its face is reasonably susceptible to more than one interpretation. See, Lioari v Maines Paper & Food Service, Inc., - AD2d -, 667 NYS 2d 548 (4th Dept 1997).

The MOU is clear in describing the actions to be taken subsequent to the purchase of the assets. Defendants were to jointly and severally make sure that plaintiff would acquire title to the assets as well as possession of the assets. Title and possession of the assets were to be transferred pursuant to Schedule 2 of the MOU. Schedule 2 obligated defendants to transfer four unserviceable engines pursuant to plaintiff's instructions within ten business days of the closing; ferry one aircraft to Aruba within ten business days of the closing; ferry any aircraft identified by plaintiff to Aruba; and de-register and export all of the flyable aircraft out of Venezuela no later than November 25, 1996. The parties agreed that, subject to review of the business plan, certain aircraft may not be required to be exported. Paragraph 15 indicates that the parties would consider the possibility of operating an airline, that Ramiz would prepare and submit a business plan to plaintiff and consideration would be given to the structuring of such an airline. This shows that the parties had considered the option of operating an airline with some of the assets, but this did not constitute a commitment to set up or operate such an airline.

Defendants claim that they were defrauded into entering into the MOU because plaintiff represented that the assets would be used solely to operate an airline in Venezuela. In order to establish a claim in fraud, there must be proof of a material misrepresentation of fact, made with knowledge of its falsity, with intent to deceive, justifiable reliance and damages.

Desideri v D.M.F.R. Group(USA) Co., 230 AD2d 503 (1st Dept 1997). Defendants have failed to submit evidence showing in any specific detail the fraudulent misrepresentations allegedly made by plaintiff prior to the execution of the MOU. The MOU clearly states that plaintiff was to receive title and possession of the assets and that the assets were to be transferred out of Venezuela. The use of any assets by defendants were to be considered by plaintiff but there was no guarantee that defendants were entitled to keep them.

Defendants also maintain that the MOU must be read along with the Facility Letter to remove all ambiguities with respect to the terms of the MOU. The court finds that the Facility Letter, which was executed by plaintiff and Alas Venezuela, was the loan and security documentation referred to in the MOU. The Letter provided for the terms in which Alas Venezuela would repay to plaintiff the \$21 million used to secure the assets. Schedule 2 of the MOU provided that the transfer of the assets by defendants would in effect cancel the Letter. The MOU can be read together with the Letter in order to understand the manner in which the \$21 million would have been paid off. However,

there is no ambiguity that the money was to be paid back by defendants. Galactic was to receive this money but it subsequently transferred its interest to plaintiff via an Assignment Agreement, dated April 9, 1997.

Defendants also contend that, even if the MOU is enforceable as written, they have been unable to carry out the terms of the MOU because of the actions of Venezuelan Government, which allegedly prevented the de-registration and transfer of the assets. In so alleging, they are asserting an impossibility defense which would, if proper, would excuse them for any further performance under the MOU.

The performance of a contract will be excused if such performance is rendered impossible by intervening government activities only if those activities are unforeseeable. When a governmental action is foreseeable, a contractor may not invoke impossibility as an excuse to perform. See, A & S Transportation Co v County of Nassau, 154 AD2d 456 (2d Dept 1989).

Here, the impossibility defense is not adequate because defendants have admitted that it was foreseeable that the Venezuelan Government would regard the transfer of the assets outside of Venezuela in an unfavorable light, and that the parties were aware of this fact even prior to the auction. Thus, there is no proof that it was unforeseeable that the Venezuelan Government would attempt to make the transfer of the assets difficult, if not impossible.

The court finds that plaintiff is entitled to partial

summary judgment in that defendants Ramiz and Velasquez are liable for breach of contract with respect to the MOU. They do not deny failing to transfer title or possession of the assets to plaintiff, to repay any of the money loaned to them to purchase the assets at the auction, or to make plaintiff 49% owner of Alas Venezuela. Alas Venezuela is not liable because it did not execute the MOU. Ramiz and Velasquez executed the MOU in their individual capacities and are so personally liable.

The court also finds Ramiz and Velasquez liable for breach of fiduciary duty. The MOU expressly states that these defendants would accept a fiduciary duty toward plaintiff when entering into the MOU. A fiduciary duty may be created by the express provisions of a contract. ADT Operations, Inc. v Chase Manhattan Bank, N.A., 173 Misc.2d 959 (Sup Ct NY Co 1997). In fact, a contractual relationship may give rise to fiduciary duties regardless of whether the contract itself includes specific words or language in that regard. Kern v Robert Currie Assocs., 220 AD2d 255 (1st Dept 1995).

Here, the parties intended that Ramiz and Velasquez assume fiduciary duties. Those duties included the transfer of title and possession of the assets, the regular reporting of all pertinent matters regarding the funding for the sale of assets, and the transfer of 49% of the shares of Alas Venezuela to plaintiff. Ramiz had a fiduciary duty to ensure that the \$1 million deposit was repaid to plaintiff and to indemnify plaintiff for the non-return of the deposit. Here, these

defendants have not carried out any of the terms of the MOU and have breached their fiduciary duties to plaintiff.

The court grants summary judgment to plaintiff on the issue of liability against defendants Ramiz and Velasquez with respect to its breach of contract and breach of fiduciary duties causes of action.

EQUITABLE RELIEF

Plaintiff also seeks the imposition of a constructive trust, an accounting and the appointment of a temporary receiver. With respect to the constructive trust, plaintiff claims that defendants owe a fiduciary duty to it, that they have failed to convey the assets and, as a result, have been unjustly enriched. A constructive trust may be imposed in favor of one who transfers property in reliance on a promise originating in a confidential relationship where the transfer resulted in the unjust enrichment of the holder. See, Rosers v Rosers, 63 NY2d 582 (1984).

Here, there was no transfer of the assets from plaintiff to defendants. Plaintiff never received title or possession of the assets which were in defendant's possession. Therefore, a constructive trust is not an appropriate remedy for plaintiff.

With respect to an accounting, such a right is premised upon the existence of a confidential or fiduciary relationship and a breach of duty imposed by that relationship respecting property in which the party seeking an accounting has an interest. See, Palazzo v Palazzo, 121 AD2d 261 (1st Dept 1986). Here, it has been held that Ramiz and Velasquez assumed fiduciary duties

pursuant to the MOU, and that they had an obligation to transfer the assets at bar to plaintiff. Therefore, plaintiff is entitled to an accounting of the assets by these defendants.

With respect to temporary receivership, this is an extreme remedy which can only be invoked in cases in which a moving party has made a clear evidentiary showing of necessity for the conservation of property and the protection of the interest of movant. See, DaSilva v DaSilva, 225 AD2d 513 (2d Dept 1996).

Plaintiff argues that because the assets are located in Venezuela, title to the assets should be transferred to a court-appointed receiver pending the outcome of this action. It is alleged by plaintiff that the assets are subject to an embargo issued by a Venezuelan court for plaintiff's benefit. Plaintiff believes that an order from this court directing that title to the assets be transferred to a receiver would be respected by the Venezuelan court. Plaintiff argues that the assets are in danger of being irreparably destroyed because defendants are not requiring Aeropostal, the entity in possession of the assets, to pay any rent for their use, and that defendants are presently in debt, and creditors could seek recourse against creditors to satisfy claims.

Defendants claim that the court does not have jurisdiction over the assets because they are in a foreign country. Furthermore, the court allegedly lacks the power to transfer title of property to a receiver. A receiver allegedly is only a custodian of another's property and does not hold title.

Defendants also claim that there is insufficient proof that the assets are to be irreparably damaged unless a receiver is appointed.

The court finds that there is not sufficient proof that the assets are in danger of irreparable loss or harm. The evidence of Aeropostal's insolvency is far from definite and it is not clear that the assets will be lost. Moreover, the court lacks the power to transfer title in the assets in Venezuela to a receiver. A receiver would only have the right of possession as the court's officer. See, Daro Industries, Inc. v RAS Enterprises, Inc., 56 AD2d 776 (1st Dept 1977), affd 44 NY2d 969 (1978).

The motion for appointment of a temporary receiver is denied.

DECLARATORY JUDGMENT

Plaintiff seeks a declaratory judgment that it is a 49% shareholder of Alas Venezuela. Defendants have admitted that Alas Venezuela is currently 100% owned by Velasquez, but in statements made to the United States Department of Transportation, they have allegedly stated that plaintiff was in fact a 49% shareholder. Plaintiff wants this court to make a judgment to **end** this uncertainty.

Defendants argue that the MOU did not contain a promise to sell shares in Alas Venezuela. The MOU provided that the obligation of Galactic, not plaintiff, to release funds for the purchase of the assets allegedly was conditioned upon the fact

that plaintiff would become the beneficiary of 49% of the shares of Alas Venezuela and that Ramiz and Velasquez take steps to procure that plaintiff is registered as the owner of such. According to defendants, this condition cannot be enforced by this court.

The fact remains that Galactic provided the funds for the sale of assets and assigned its rights under the MOU to plaintiff. Since this is the act that has been performed by Galactic, Ramiz and Velasquez were obligated to make plaintiff the beneficiary of 49% of the shares of Alas Venezuela. The evidence submitted is inconsistent as to whether defendants have deemed plaintiff the 49% owner of Alas Venezuela.

Declaratory judgment is a proper remedy when the record presents a real controversy involving a substantial legal interest and it is shown that a declaratory judgment would be **useful**. Abate v All-City Ins. Co., 214 AD2d 627 (2d Dept 1995).

The court shall make a declaratory judgment that plaintiff is entitled to have 49% of the stock of Alas Venezuela and to be registered as the owner of same.

Accordingly, it is

ORDERED that the motion for summary judgment is granted on the issue of liability against defendants Nelson Ramiz and Haydhelen Emilia Velasquez Morales with respect to the breach of contract and breach of fiduciary duty causes of action; and it is further

ORDERED that the motion for the imposition of a constructive

trust, and the appointment of a temporary receiver is denied, and it is further

ORDERED that the motion for an accounting of the assets by defendants Ramiz and Velasquez is granted; and it is further

ORDERED AND ADJUDGED that:

Plaintiff Alas International Limited is entitled to 49% of the shares of defendant **Corporacion** Alas de Venezuela and to be registered as the owner of same.

Dated: November 2, 1998


ENTER:
J.S.C.

**Supreme Court of the State of New York
County of New York**

Index No. 601817/97
Date purchased 4/9/97

Alas International Limited,

Plaintiff(s) designate(s)
New York
County as the place of trial.

against **Plaintiff(s)**

The basis of the venue is
Contractual Provision

Summons

**Nelson Ramirez, Raydhelm Velasquez Morales, and
Corporacion Alas de Venezuela, C.A.**

Defendant(s)

Plaintiff(s) reside(s) at
P.O. Box 258, 15 Union
Street, St. Elier,
County of Channel Islands.

To the above named Defendant(s)

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated. April 9, 1997

Attorney(s) for Plaintiff

Defendant's address:

Office and Post Office Address

**Nelson Ramirez
Calle Paez 108-A La Vina Valencia
Venezuela**

**Winthrop, Stinson, Putnam & Roberts
One Battery Park Plaza
New York, NY 10004-1490
(212) 858-1000**

**Raydhelm Velasquez Morales
Calle Paez 108-A La Vina Valencia
Venezuela**

**Corporacion Alas de Venezuela, C.A.
Calle Paez 108-A La Vina Valencia
Venezuela**

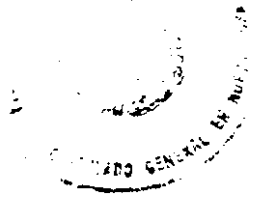


**NEW YORK
COUNTY CLERK'S OFFICE**

APR 09 1997

**NOT COMPARED
WITH COPY FILED**

SECRETARY OF SERVICE



4/9/97

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- x

Alas International Limited, :
Plaintiff, :

-against- : Index No. 601817 / 97

Nelson Ramiz, Haydhelm Emilia :
Velasquez Morales, and Corporación :
Alas de Venezuela, C.A. :

Defendants.

----- x

Plaintiff, Alas International Limited, by its counsel
Winthrop, Stimson, Putnam & Roberts, for its complaint alleges as
follows:

Nature of Action. Parties, Jurisdiction and Venue

1. This is an action for money damages for breach of
contract and breach of fiduciary duty, injunctive relief,
specific performance, and declaratory judgment.

2. Plaintiff Alas International Limited ("Alas
International") is a corporation incorporated and in good
standing under the laws of the British Virgin Isles, with its
principal place of business in Guernsey, Channel Islands. Alas
International's management and majority owners are highly
experienced in international commercial aviation transactions.

It is an assignee of certain rights of Aeron Aviation Resources, Inc., EBY Capital, Inc. and Galactic Enterprises, Ltd.

3. Defendant Nelson Ramiz ("**Ramiz**") is a Venezuelan resident and a U.S. citizen. Ramiz is an aviation broker.

4. Defendant Haydhelm Velasquez Morales ("**Mrs.** Morales") is a Venezuelan citizen and resident, and the wife of Ramiz.

5. Defendant **Corporación** Alas de Venezuela, C.A. ("Alas Venezuela") is a corporation registered in Valencia, State of Carabobo, Venezuela.

6. Mrs. Morales is the owner of at least 51% of the shares of Alas Venezuela.

7. This action arises out of a contract covering not less than \$1 million, containing a provision choosing New York law to govern and a provision in which the parties agreed to submit to the jurisdiction of the courts of this State, and venue in New York County. Accordingly, this Court has personal jurisdiction over the defendants and venue is proper in this County.

Factual Allegations

Preliminary Negotiations and \$1 million Security Deposit

a. In August 1996, Ramiz approached Eldad Ben-Yosef (the owner of EBY Capital, Inc. and Aeron Aviation Resources, Inc.) concerning possible acquisition of the assets of **Linea Aeropostal Venezolana, C.A. ("Aeropostal")** an airline whose assets were under the jurisdiction of court-appointed receivers in **Venezuela**. Ramiz explained that the assets of Aeropostal would likely be purchased for the minimum bid required by the court of \$20 million. Ramiz also stated that the purchaser of the assets of Aeropostal was required to be a Venezuelan company, and that **Ramiz's** wife, Mrs. Morales, owned 100% of Alas Venezuela and it could act as the nominal purchaser of the assets. Mr. Ben-Yosef in turn enlisted the assistance of Galactic Enterprises Limited ("Galactic") through David L. Massie, whose family **trust is** part owner of Galactic. **Mr.** Ben-Yosef and Galactic decided to structure the acquisition through Alas International, with Mr. Ben-Yosef and Galactic as indirect **controlling** owners of Alas International.

9. According to Ramiz, a good faith deposit of \$1 million was required by the Venezuelan court as a condition to submitting a bid for the assets of Aeropostal. Ramiz further stated that the \$1 million deposit would be returned by the court-appointed receivers of Aeropostal either if the bid was unsuccessful or if the bid was successful and the purchase of the assets **was** completed.

10. On August 29, 1996, Galactic Enterprises Ltd. ("Galactic") advanced \$1 million to Ramiz for the purpose of advancing the same to Alas Venezuela for deposit with the court-appointed receivers of Aeropostal in connection with an anticipated bid. Galactic later transferred to Alas International its right to repayment of the \$1 million.

11. Upon the recommendation of **Ramiz**, Alas International retained John R. Pate ("Pate"), a partner in the Venezuelan law firm of De **Sola** and Pate, to act as its legal adviser in connection with the Aeropostal transaction. Pate also represented Ramiz, Mrs. Morales, and Alas Venezuela, but Pate assured the management of Alas International that such dual representation was proper and that if a conflict arose, Alas International's interests would be represented by another member of De **Sola** and Pate.

12. The parties agreed that Alas International would provide \$20 million to Alas Venezuela for the purchase of the Aeropostal assets, and, that upon the successful purchase of these assets by Alas Venezuela, the assets would be transferred to Alas International.

13. Alas International repeatedly sought legal advice from Pate concerning, among other things, the ability of Alas Venezuela to transfer the Aeropostal assets to Alas International. Pate consistently advised Alas International that the transaction could proceed as planned, and agreed to oversee the drafting of the necessary legal documents. Pate specifically

advised Alas International that the transaction was an asset purchase with no obligation to establish an airline in Venezuela; that title to the assets could be transferred; and that the assets could be physically moved out of Venezuela.

14. On or about September 12, 1996 (after the \$1 million deposit had been made with the court-appointed receivers of Aeropostal), Pate advised Alas International that the \$1 million deposit could not be utilized as part of the \$20 million purchase price, but was instead to be retained by the receivers for 45 days following the closing of the purchase of the assets to secure various other obligations. Therefore, Alas International would be required to provide a total of \$21 million to Alas Venezuela in order to close the transaction.

Structure of Transaction

15. A memorandum of understanding dated September 26, 1996 (the "MOU") was entered into among Ramiz, Mrs. Morales, Alas Venezuela, Aeron Aviation Resources Inc., EBY Capital, Inc., and Galactic. A copy of the MOU is attached hereto as Exhibit A and incorporated by reference. The MOU set forth the terms under which the parties would participate in the acquisition of the assets of Aeropostal. Such assets (hereinafter, the "Assets") consisted of, among other things: nine DC-9 aircraft, each fitted with two Pratt & Whitney -17 engines; three spare Pratt & Whitney engines; various spare parts; various rotatable and consumable spare parts; tools and maintenance equipment; office equipment; and the rights to the name "Aeropostal."

16. In general terms, the MOU contemplated that the Assets would be acquired by Alas Venezuela from the court-appointed receivers with \$20 million advanced by Galactic, with title held for a short period by Alas Venezuela, and the Assets then being transferred to Alas International. Ramiz would be compensated for his efforts in the transaction with 5% of the ownership of Alas International. Ramiz and Alas Venezuela were also obligated under the MOU to indemnify Alas International against the nonreturn of \$1 million deposit. The MOU also contemplated that the parties might (but were not obligated to) lease, or otherwise make available, some of the Assets to Alas Venezuela (which was essentially a shell company) for the purpose of enabling Alas Venezuela to start and operate a new airline in Venezuela. Alas International was to own 49% of Alas Venezuela, with Ramiz and/or Mrs. Morales to own the remainder.

17. In paragraph 2 of the MOU, Ramiz, Mrs. Morales, and Alas Venezuela "jointly and severally" agreed, upon the successful purchase of the Assets by Alas Venezuela, to transfer all rights in and title to such assets to Alas International.

18. Paragraph 4 of the MOU required Ramiz and Mrs. Morales to take all action necessary to make Alas International the beneficial owner of 49% of the outstanding shares of Alas Venezuela.

19. Paragraph 9 of the MOU provided that, upon purchase of the Assets by Alas Venezuela, rights in respect of the \$1 million deposit "shall be transferred to Alas

International with a value date for the purposes of calculating interest of 29 August 1996 (i.e.; it shall be treated as if Alas [Venezuela] owes this sum to Alas International...)"

20. The MOU, in paragraph 13, obligated Ramiz and Alas Venezuela to "take all steps to insure the \$1 million deposit is returned by the receivers and is repaid to Alas International and [to] indemnify Alas International against nonreturn of the \$1 million security deposit that has been lodged save that nothing in this clause shall act as a guarantee against the default of the receivers."

21. Alas Venezuela is also obligated under paragraph 14 of the MOU to enter into "security documentation" evidencing its obligation to secure the \$21 million advanced by Alas International with the Assets as collateral.

22. The obligation of Alas Venezuela to repay the \$21 million is evidenced by a facility letter dated September 27, 1996 from Alas International to Alas Venezuela (the "Facility Letter"), which provides that the \$21 million (plus interest and fees) is repayable upon demand.

23. A handwritten rider, initialed by all of the parties to the MOU and appearing on Schedule 2 of the MOU, states that "[f]or the avoidance of doubt the transfer of title of the aircraft and other assets [of Aeropostal] to Alas International shall operate to pay in part the debt incurred of \$21 million as to \$20 million. The balance of \$1 million is expected to be repaid pursuant to provision 13 [of the MOU] and the \$20 million

repaid by transfer of all [of the Assets]. Upon the completion of such transfers the Loan Agreement evidencing such debt shall be deemed canceled and of no further force or effect."

24. The MOU, in paragraph 17, imposed fiduciary duties on Ramiz and Mrs. Morales with respect to Alas International and the other parties to the MOU.

Bid and Closing

25. The referenced bid for the Assets was **successful** at a price of \$20 million.

26. On or about September 27, 1997, Alas International advanced \$20 million to Alas Venezuela for the purpose of purchasing the Assets from the court-appointed receivers, pursuant to the terms of the bid. Alas Venezuela subsequently purchased Assets. The closing occurred late in the evening of September 27, 1997.

27. Pate and Alas Venezuela induced Alas International to advance the \$20 million purchase price for the closing by arranging for Alas International and Alas Venezuela to execute mortgages on the Assets and assuring Alas International that these mortgages would be recorded against the Assets, thus perfecting the liens of Alas International.

Alas Venezuela, Ramiz, and Mrs. Morales Breach
the MOU, and Convert the Assets and the \$1
Million Security Deposit

28. The receivers of Aeropostal have returned the \$1 million to the control of Ramiz and/or **Mrs. Morales** and/or Alas Venezuela.

29. In accordance with the terms of the **MOU**, Alas International advanced an additional \$70,000 to Alas Venezuela for upkeep and maintenance of the Assets.

30. **Ramiz**, Mrs. Morales, and/or Alas Venezuela wrongfully transferred the \$1 million and leased certain of the Assets to a subsidiary of Alas Venezuela called Aeropostal Alas de Venezuela, C.A.

31. Aeropostal Alas de Venezuela, C.A. is currently using the \$1 million and certain of the Assets in its commercial **airline operations**.

32. The Assets are at risk of declining in value because of their use in commercial airline operations.

33. Although Alas Venezuela and/or its subsidiary Aeropostal Alas de Venezuela, C.A. are using certain of the Assets in revenue-producing operations, they have not paid for ownership of the Assets (the costs of acquisition having been funded by Alas International, as set forth above), nor are they paying rent or interest to Alas International.

34. Alas International had arranged for a Colombian concern to lease **two** of the aircraft included with the Assets, but has been unable to consummate the anticipated lease because it does not have possession of the Assets.

35. Pate informed Alas International that the mortgages representing Alas International's security interest in the Assets had not been and would not be recorded, despite having been executed by both Alas International and Alas Venezuela.

36. Alas International has demanded that: (a) Alas Venezuela repay the \$1 million and that Ramiz and Alas Venezuela honor their obligation to indemnify Alas International against nonreturn of the \$1 million; (b) Ramiz, Mrs. Morales, and Alas Venezuela transfer all title to and rights in the Assets to Alas International; (c) Ramiz and Mrs. Morales take whatever action necessary to make Alas International a 49% shareholder of Alas Venezuela; (d) Alas Venezuela execute a mortgage securing the \$21 million advanced by Alas International with the Assets as collateral; and (e) Alas Venezuela, Ramiz, and Mrs. Morales hold for the benefit of Alas International any and all of the income or other benefit generated by the use of the \$1 million and certain of the Assets by Aeropostal Alas de Venezuela, C.V.

37. Such demands have not been honored.

38. Aeron Aviation Resources, Inc., EBY Capital, Inc. and Galactic have assigned to Alas International their rights under the MOU.

First Cause of Action (breach of contract)

39. Alas International realleges paragraphs 1-38.

40. Ramiz and Alas Venezuela are in breach of their obligations set forth in the MOU to indemnify Alas International against nonreturn of the \$1 million security deposit.

41. Alas International has been damaged by Ramiz and Alas Venezuela in the amount of at least \$1 million, plus interest.

Second Cause of Action (specific performance)

42. Alas International realleges paragraphs 1-41.

43. Ramiz, Mrs. Morales, and Alas Venezuela are in breach of their obligations set forth in the MOU to transfer the Assets to Alas International.

44. The Assets are unique.

45. Alas International has no adequate remedy at law. Alas International is entitled to specific performance of the aforesaid obligation under the MOU to transfer ownership and control of the Assets to Alas International.

Third Cause of Action (breach of fiduciary duty)

46. Alas International realleges paragraphs 1-45.

47. Ramiz and Mrs. Morales have breached their fiduciary duties to Alas International.

48. Alas International has been damaged by such breaches of Ramiz and Mrs. Morales, in an amount to be proven at trial.

Fourth Cause of Action (specific performance)

49. Alas International realleges paragraphs 1-48.

50. Ramiz and Mrs. Morales are in breach of their obligations under the MOU to transfer 49% of the outstanding shares of Alas Venezuela to Alas International.

51. The shares of Alas Venezuela are not publicly traded.

52. Alas International has no adequate remedy at law. Alas International is entitled to specific performance of the aforesaid obligations under the MOU to transfer 49% of the outstanding shares of Alas Venezuela to Alas International.

Fifth Cause of Action (breach of contract)

53. Alas International realleges paragraphs 1-52.

54. Alas International has been damaged by not having been able to consummate the proposed leases of certain of the Assets.

55. Certain of the Assets are or may be lower in value than they were when they should have been transferred to Alas International.

56. Alas International is entitled to damages for breach of the MOU, in an amount to be proven at trial.

Sixth Cause of Action (constructive trust)

57. Alas International realleges paragraphs 1-56.

58. Defendants have been using some of the Assets to generate income for themselves.

59. Defendants have been unjustly enriched by the amount of any income or other benefit they have received from continued possession and purported control over the Assets.

60. Alas International is entitled to the imposition of a constructive trust over any such income and other benefit.

Seventh Cause of Action (injunctive relief)

61. Alas International realleges paragraphs 1-60.

62. Unless enjoined by this Court, defendants may dissipate, transfer or destroy the Assets, thus frustrating any final judgment of specific performance.

63. The Assets are unique.

64. Alas International has no adequate remedy at law. Alas International is entitled to preliminary and permanent injunctions enjoining defendants from transferring, secreting or wasting the Assets.

Eighth Cause of Action (declaratory judgment)

65. Alas International realleges paragraphs 1-64.

66. Alas Venezuela is in breach of its obligation under the MOU to execute a mortgage securing the \$21 million advanced by Alas International with the Assets as collateral.

67. The Assets are unique.

68. Alas International has no adequate remedy at law. Alas International is entitled to specific performance of the aforesaid obligation under the MOU to have a mortgage executed securing the \$21 million advanced by Alas International with the Assets as collateral.

Ninth Cause of Action fdeclaratory judgment)

69. Alas International realleges paragraphs 1-68.

70. The MOU states that, upon Alas Venezuela's transfer of the Assets to Alas International, the \$20 million due under the Facility Letter shall be deemed paid in full, and the Facility Letter will be deemed canceled.

71. The purpose of the Facility Letter, and the obligations thereunder, is to furnish Alas International with collateral security, securing Alas Venezuela's obligation to transfer the Assets to Alas International.

72. A **justiciable** controversy exists between Alas International and Alas Venezuela.

73. Alas International is entitled to a declaratory judgment to the effect the Facility Letter and obligations created thereby constitute collateral security for the obligations of defendants to transfer the Assets to Alas International.

WHEREFORE, Alas International Limited demands

- (1) judgment against defendants Ramiz and Alas Venezuela in the amount of at least \$1 million, plus interest;
- (2) an order directing defendants Ramiz, Mrs. Morales, and Alas Venezuela to transfer the Assets to Alas International;
- (3) judgment against defendants Ramiz and Mrs. Morales for breach of fiduciary duty, in an amount to be determined at trial;

- (4) an order directing defendants Ramiz and Mrs. Morales to transfer 49% of the outstanding shares of Alas Venezuela to Alas International;
- (5) judgment against Ramiz, Mrs. Morales, and Alas Venezuela for breach of the **MOU**, in an amount to be determined at trial;
- (6) imposition of a constructive trust over the income or other benefit generated by the **Assets**;
- (7) an order enjoining defendants Ramiz, **Mrs.** Morales, and Alas Venezuela from transferring, secreting, Wasting, or in any way disposing of the **Assets**;
- (8) an order directing Alas Venezuela to execute a mortgage securing the \$21 million advanced by Alas International with the **Assets** as collateral;
- (9) a declaratory judgment to the effect that the Facility Letter and the obligations created thereby constitute collateral security, securing the **obligations** of defendants Ramiz, Mrs. Morales, and Alas Venezuela to transfer the **Assets** to Alas International; and
- (10) granting Alas International such other and further

relief as to the Court may seem just and proper.

Dated: New York, New York
 April 9, 1997

024023
 WINTHROP, STIMSON, PUTNAM & ROBERTS
 One Battery Park Plaza
 New York, NY 10004
 (212) 858-1000
 Attorneys for Plaintiff

FILED
 4-9-97
 COUNTY CLERK
 NEW YORK COUNTY

MAY 11 1997
 4/9/97

Exhibit A

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made 26 September 1996 between:-

- (1) Mr. Nelson Ramiz of Calle Paez 108-A LaViña Valencia Venezuela ("Mr. Ramiz");
- (2) Mrs Haydhelm Velasquez Morales of of Calle Paez 108-h LaViña Valencia Venezuela ("Mrs Morales")
- (3) Corporacion Alas de Venezuela a coporation registered in the State of Carabobo Venezuela ("Alas")
- (4) Aeron Aviation Resources Inc. a New York corporation of 420 Great Neck Road, Great Neck, New York 11021. GSA; ("AARI");
- (5) EBY Capitai, Inc. ("EBY") a Delaware corporation also of 420 Great Neck Road, Great Neck, New York 11021. CSA ; and
- (6) Galactic Enterprises Ltd c/o PO Box 258 15 Union Street, St. Helier, Jersey, JE4 STY, Channel Islands ("Galactic"), a corporation incorporated in the British Virgin Isles.

WHEREAS Alas is a corporation owned by Mrs Morales which Alas, Mr Ramiz and Mrs Morales confirm has not to date traded or incurred any liabilities;

WHEREAS Galactic has provided the sum of US\$ 1 million to Mr. Ramiz which he passed to Alas and which has been lodged with the court appointed receivers of Linea Aeropostal Venezoiana ("Aeropostal") in Caracas;

WHEREAS such deposit was a condition precedent to making a bid to purchase the entire business and undertaking of Aeropostal and the assets specified in Schedule 1;

WHEREAS the bid was successful at a price of US\$20 million: and

WHEREAS pursuant to the above referenced court sale, completion of the purchase (meaning payment of the balance of US\$20 million to be paid - the \$1 million to be held by the receivers as a security deposit for 45 days) must be made within 30 days of 30 August 1996:

WHEREAS Alas international Limited ("Alas International") is a company incorporated in the British Virgin isles for the purpose of this transaction

The parries have agreed as follows:-

1. Galactic has procured that **US\$ 20 million** is available for the **purpose** of completing the **transaction** and will release such **subject** to satisfactory legal opinions, execution of satisfactory documentation and implementation of any relevant provision of **this MOU**, and **the Asset Purchase Agreement** to be entered into by **Alas with Aeropostal**.
2. **Mr. Ramiz, Mrs Morales** and Alas jointly and severally undertake **that they will** after closing of the purchase of the Equipment Package (as defined in Schedule 1) procure that title to the Equipment Package and all rights pertaining thereto as well as possession of **the** Equipment or parts thereof, shall be transferred to Alas **International** or **its nominee** in accordance with the requirements and dates set out in Schedule 2) , and. or **in** accordance with any **written instructions** to be given by **Alas International** to Alas. Alas International shall approve the transfer of title of items identified in Schedule 1 **(e)** and **(f)**, for **the** purpose of a sale or refinancing, provided that the proceeds of such a sale or financing shall be used as working capital for Alas and no event of default has **occurred**

3 The ownership of "Alas international" shall be:-

- a. 5.0% by **Mr. Ramiz**;
- b. 31.666% by EBY;
- c. 63.333% by Galactic

Mr Ramiz hereby nominates **Mr Eldad Ben Yosef** to act as his nominee in the matter of registration and Galactic will procure **that** as soon as reasonably practical appropriate share certificates are issued.

4. The obligation of Galactic to release the funds provided for in clause 1 is conditional upon inter **alia** evidence satisfactory to Galactic that Alas International is **the** beneficial owner of 49% of the share capital of **Alas** and that **Mrs Morales** and **Mr. Ramiz** have taken all **necessary** steps to procure that **Alas International** will be **registered as** the official owner of such. **At** the option of Alas International such shares may be held by a subsidiary of Alas International or a **trustee**.
5. **Mr. Ramiz** agrees that in calculating any distributions or sale of **Alas International**. his 5% interest in **Alas International** does not **carry** any beneficial interest in **Alas**. i.e. the **benefit** of the 49% **shareholding** shall lie entirely with the other shareholders of **Alas International**. For the avoidance of doubt. **Mr. Ramiz** shall be entitled to 5% of all **profits arising** from the Equipment Package.
5. The parties shall operate **Alas International** with a view of **maximising the revenue** falling to the shareholders and tier repayment of any loan funds. payment of all **expense and other outgoings** shall distribute any **surpluses** in accordance with the above **shareholdings**.

- (a) Mr. **Ramiz** will:
- (i) co-ordinate all matters in Venezuela. in **particular** any negotiations **necessary** with the receivers in relation to the sale;
 - (ii) co-ordinate subsequent negotiations in relation to such aviation and **mute licences** or other concessions as may be available to Aempostal;
 - (iii) procure that from completion **adequate** security measures are taken to guard against loss or damage to the Equipment Package; and
 - (iv) formulate a business plan as to the viability of Alas establishing an airline to be called **Aeropostal** and the general exploitation of the name **Aeropostal**.
 - (v) organise and procure appropriate preventative maintenance to the Equipment Package and **the** preparation of **Aircraft** for flight as directed by Alas **International**
- (b) **AARI** will:
- (i) co-ordinate marketing and technical aspects in relation to the Equipment Package; and
 - (ii) negotiate any leases or sales **contracts** in relation to the Equipment Package.
- (c) Galactic will organise matters **financial** and **fiscally** including company **administration**. operation **of** bank accounts, financing **etc.**

9. On closing, the obligation for the **US\$1** million deposit **shall be** transferred to Alas International with a value date for the purposes of calculating interest of 29 August 1996 (i.e.; it shall be treated as if Alas owes this sum to Alas International and Alas International owes this **sum** to Galactic).

10. In relation to the **\$21** million that will then be due to **Galactic** (or parties procured by Galactic), the parties **agree** as follows:

- (i) Galactic shall be entitled to execute such security over the assets of Alas International that it considers reasonable including **mongages over the** Equipment Package;
- (ii) Such **funds** may be made available either by Galactic directly or through Galactic arranging lines of credit which may if necessary be secured against the equipment and **the** assets of **Alas** International.
- (iii) Alas International shall pay interest at a rate equal **to** the higher of 10% **p.a.** or such actual rate **as** is charged by the lending bank.

(iv) (a) Galactic may if it wishes **introduce up to \$8 million of the funding** required by way of an issue of Preference Shares to be made by **Alas International** to Galactic's nominee. Such Preference Shares shall:

(i) carry a coupon of 10% **p.a.**

(iii) be redeemable at any time

(iii) have **priority** in relation to cash flow

(iv) be callable on 90 days notice.

but shall not carry any rights to participate in **the profits** of Alas International (except for **the** coupon mentioned in (i) above).

(b) The **Partners** agree to take all reasonable steps to redeem the Preference Shares **as** soon as cash flow permits.

11. Expenses of **the** venture. in so far as they relate **to the** storage and preservation of the Equipment Package (including ground risks insurance), shall be borne by Alas International.

12. (a) All other expenses in relation to the Equipment Package and expenses in relation to Alas (and. in particular. any costs associated with Alas concerning **airline operations** using the rights or concessions **granted to Aerpostal**) shall be borne by Alas.

(b) In order to facilitate **Alas** meeting its obligations hereunder **and** in particular clause 12(a) above **Alas International** agrees to make a **supplementary** advance of **US\$20,000** per month to **Alas** for period of up to six months.

(c) The obligation of Alas to draw the above funding shall be conditional upon receipt by Alas International by **the 15th** of each month of income **and** expenditure accounts for the preceding month.

(d) **Alas Mrs Morales** and **Mr Ramiz** agree that **they** shall seek the approval of **Alas International** before incurring any liability in excess of **~~\$2,500.00~~**.

(e) For the purpose of **administration and** approval Alas International nominates **Mr Ben Yosei** to act upon its behalf and **Mrs Morales, Mr. Ramiz and Alas** agree to inform **Mr Ben Yoser** of **progress** and all pertinent **matters** on a regular basis and not less than once per week.

13. **Mr. Ramiz and Alas** shall take all steps to ensure the \$1 million deposit is **returned** by the receivers **and** is repaid to **Alas International** and shall indemnify **Alas International**

against non return of the \$1 million security deposit that has been lodged save that nothing in this clause shall act as a guarantee against the default of the **receivers**.

14. Alas **shall** enter into a **formal** loan agreement and **security** documentation in relation to the funding contemplated hereunder. **Provided that** Alas, **Mrs Morales** and **Mr Ramiz** meet all their obligations hereunder and no Event of Default has been declared under **the** loan or security documentation then **Alas International will** waive the interest and fees due under the loan documentation.

15. (a) As contemplated in Clause **8(a)** above the parties agree to give consideration to the establishment of **Alas** as an airline **trading** under the **name Aeropostal**.

(b) Mr. Ramiz shall no later than 15 October, 1996 prepare and submit to **Alas International** a full business plan in relation to such

(c) Consideration **shall** be given to structuring the airline **so** that maintenance and passenger **carrying operations** are separated into **separate** companies.

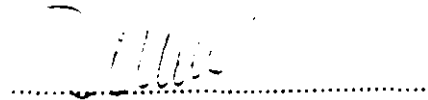
16. In relation to the services provided for hereunder, **AARI** shall be entitled to charge a management fee once the **aircraft** are on lease at a **rate equal to US\$1,500** per month **per** aircraft, subject to a monthly maximum fee of **US\$10,000**.

17. **Mrs Morales** and **Mr. Ramiz** accept that by entering into this agreement **they** owe an obligation to act towards Alas International with the utmost good faith and in accordance accept fiduciary duty towards Alas **International** and the parties to this agreement.

18. This Agreement **shall** be governed by the laws of the State of **New York** and the parties hereby submit to the jurisdiction of the **New York Courts** (Manhattan District) in relation to any matters **arising**.

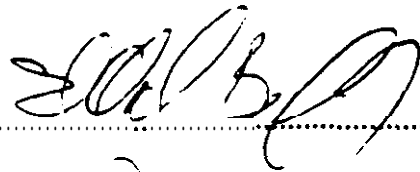
The parties have signed their names below to indicate that this **Memorandum of Understanding** is intended to create legally binding relations **between** the **parties** and is not merely an agreement to agree.

Mr. Nelson Ramiz



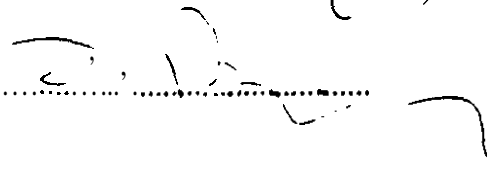
Mrs. Haydelm Velasquez Morales I.....-.....:

Eldad Ben Yosef



.....

Galactic Enterprises Ltd.



.....

Equipment and Assets in Relation to Aeropostal

- (a) 9 McDonnell Douglas DC9 **aircraft**, manufacturer serial numbers 47727, 47721, 47752, 47705, 47719, 47703, 47770, 47782 and 47712 each fitted with two Pratt & Whimey -17 engines;
688769 6 88810
- (b) **Three** spare Pratt & Whitney JT8D -17 engines (Serial Nos. [], [], []); 696693
- (c) Various **spare** part including (**but** not limited to) Engine discs **and** blades. APU's, APU spares. **combustion** chambers. avionic **parts**, RF and **HF** sets etc.;
- (d) A supply of **rotable** and consumable spare parts;
- (e) Various tools and other equipment previously used by Aeropostal **to** support its operations including (but not limited to) lathes. metal **forming** machinery, electrical and radio bench and testing equipment;
- (f) Reservation equipment support equipment and office equipment ; and
- (a) - (f) being more specifically **defined** in the **Inventory** produced by the receivers pre sale and collectively referred to herein as the Equipment Package";
- (h) rights to the name "Aeropostal".

Schedule 2

1. Immediately after the closing but no later than 10 business days thereafter, The four unserviceable engines currently on the ground as well as several other parts to be identified by Alas International, shall be prepared for shipping and shipped according to instructions to be given by Alas International.
2. Within 10 business days after closing Alas shall cause one aircraft to be ferried to Aruba and transfer title to Alas International.
3. At Alas International's sole discretion Alas shall cause any Aircraft identified by Alas International to be ferried to Aruba for the purpose of transferring title and registration in the name of Alas International.
4. By November 25, 1996 Alas shall cause all the flyable aircraft to be deregistered and exported out of Venezuela according to instructions to be given by Alas International. The parties agree that subject to review of the business plan (Paragraph 15 (b)) certain aircraft may not be required to be exported.

For the avoidance of doubt the transfer of title of the aircraft and other assets to Alas International shall operate to repay in part the debt incurred of \$20 million as to \$20 million. The balance of \$4 million is expected to be repaid pursuant to provision 3 and the declaration issued by trustee of the Equipment Package upon the completion of such transfer the loan agreement evidencing such debt shall be deemed cancelled and of no further force or effect.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

ALAS INTERNATIONAL LIMITED.

Plaintiff.

-against-

NELSON RAMIZ, HAYDHELM EMILIA
VELASQUEZ MORALES. and
CORPORACIÓN ALAS DE VENEZUELA, C.A..

Defendants.

-and-

ZADIK BINO. DAVID MASSIE. ELDAD
BEN YOSEF. FRANKLIN HOET.
BENTATA. HOET & ASSOCIATES.
AERON AVIATION RESOURCES. INC..
EBY CAPITAL. INC. and GALACTIC
ENTERPRISES LTD..

Additional Defendants
on the Counterclaims.

-----X

Justice Ramos
IAS Part 53

Index No. 601817/97

ANSWER WITH
COUNTERCLAIMS

Defendants Nelson Ramiz (“Ramiz”), Heydhelen Emilia Velazquez Morales. sued incorrectly herein as Heydhelm Velasquez Morales (“Velazquez”), and Corporación Alas de Venezuela. C.A. (“Alas Venezuela” and collectively. the “defendants”). by their attorneys. Feltman, Karesh. Major & Farbman. Limited Liability Partnership. for their Answer to the complaint herein. respectfully allege:

1. Deny each and every allegation contained in paragraph 1 of the complaint.
except refer to the complaint for the nature of the causes of action alleged therein.

2. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 2 of the complaint. except admit upon information and belief that Alas International is incorporated under the laws of the British Virgin Islands.

3. Deny each and every allegation contained in paragraph 3 of the complaint,
except admit that Ramiz is a Venezuelan resident and a U.S. citizen.

4. Admit the allegations contained in paragraph 3 of the complaint.

5. Deny each and every allegation contained in paragraph 5 of the complaint.
except admit that Alas Venezuela is a Venezuelan corporation currently registered in Caracas, Venezuela.

6. Admit the allegations contained in paragraph 6 of the complaint.

7. Deny each and every allegation contained in paragraph 7 of the complaint.
except allege that to the extent this action is based upon that certain Memorandum of

Understanding dated September 26, 1996 (the "MOU"), refer to the MOU for the terms and legal effect thereof.

8. Deny each and every allegation contained in paragraph 8 of the complaint, except admit that in or about August of 1996, Ramiz had discussions with Ben Yosef concerning the acquisition of certain assets from Linea Aeropostal Venezolana C.A. ("Aeropostal"), whose assets were then under the jurisdiction of a bankruptcy court in Venezuela. and that Ramiz advised Ben Yosef that Ramiz believed the assets of Aeropostal could be purchased for approximately \$20,000,000. that the assets would have to be dedicated to the operation of an airline in Venezuela. that the operator had to be a Venezuelan company and that Velazquez owned a company that could qualify to be the purchaser and operator of the assets. Defendants deny knowledge or information sufficient to form a belief concerning the participation of Galactic Enterprises Limited. David Massie, or any trust of David Massie's family in the transactions at issue in this litigation and as to any decisions made between Ben Yosef and Galactic concerning! the manner in which they would provide the funding for the acquisition of the assets of Aeropostal.

9. Deny each and every allegation contained in paragraph 9 of the complaint. except admit that a \$ 1,000,000 deposit was required in connection with the submission of a bid for the purchase of the assets of Aeropostal.

10. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 10 of the complaint. except admit that on or about August 30, 1996, Ramiz received \$1,000,000 for the purpose of enabling Alas Venezuela to make the necessary deposit in order to qualify to submit a bid for the purchase of the assets of Aeropostal.

11. Deny each and every allegation contained in paragraph 11 of the complaint. except deny knowledge or information with regard to what, if anything, John Pate assured or said to Alas International. and admit that John Pate, a member of DeSola & Pate, was retained as a consultant to Alas Venezuela in connection with the acquisition by that company of the assets of Aeropostal.

12. Deny each and every allegation contained in paragraph 12 of the complaint. except admit that Alas International committed to loan at least \$20,000,000 to Alas Venezuela in order to finance the acquisition by Alas Venezuela of the assets of Aeropostal in the event that Alas Venezuela became the successful bidder for those assets.

13. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs 13 and 14 of the complaint.

14. Deny each and every allegation contained in paragraph 15 of the complaint. except admit that the MOU was entered into between and among the signatories thereto and allege affirmatively that Alas Venezuela, Aeron Aviation Resources. Inc. and EBY Capital. Inc. are not parties to the MOU. Defendants refer to the MOU for the terms, covenants and legal effect thereof.

15. Deny each and every allegation contained in paragraphs 16 through 21 of the complaint and refer to the MOU for the terms, conditions and legal effect thereof.

16. Deny each and every allegation contained in paragraph 22 of the complaint. except admit that Alas Venezuela and Alas International entered into a certain facility letter dated September 27, 1996 and refer thereto for the terms, conditions and legal effect thereof.

17. Deny each and every allegation contained in paragraphs 23 and 24 of the complaint and refer to the MOU for the terms, conditions and legal effect thereof.

18. Deny each and every allegation contained in paragraph 25 of the complaint. except admit that the bid of Alas Venezuela for \$20,000,000 was the successful bid to purchase the assets of Aeropostal.

19. Deny each and every allegation contained in paragraph 26 of the complaint, except admit that Alas International loaned \$20,000,000 to Alas Venezuela to enable Alas Venezuela to purchase the assets of Aeropostal pursuant to its bid and that Alas Venezuela purchased such assets at a closing that occurred in the evening of September 27, 1996 in Caracas, Venezuela.

20. Deny each and every allegation contained in paragraph 27 of the complaint, except defendants deny knowledge or information as to what, if anything, John Pate assured Alas International.

21. Deny each and every allegation contained in paragraph 28 of the complaint, except admit that the \$1,000,000 deposit was refunded to Alas Venezuela on or about November 12, 1997 and that Alas Venezuela was required to utilize said sum to capitalize the operations of Aeropostal.

22. Deny each and every allegation contained in paragraph 29 of the complaint.

23. Deny each and every allegation contained in paragraph 30 of the complaint.

24. Deny each and every allegation contained in paragraph 31 of the complaint, except admit that Alas Venezuela was required to utilize the \$1,000,000 as paid in capital and dedicated the assets to the operation of the airline.

25. Deny each and every allegation contained in paragraph 32 of the complaint.

26. Deny each and every allegation contained in paragraph 33 of the complaint, except admit that Aeropostal Alas de Venezuela, C.A., is using certain of the Assets (as defined in paragraph 93 -hereof) in the operation of the airline, but deny any obligation to pay currently for the use of such Assets by reason of the affirmative defenses, setoffs and counterclaims more fully hereinafter set forth.

27. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs 34 and 35 of the complaint.

28. Deny each and every allegation contained in paragraph 36 of the complaint, except admit that certain demands were made upon Alas Venezuela and Ramiz from time to time.

29. Deny each and every allegation set forth in paragraph 37 of the complaint and allege affirmatively that to the extent that defendants or any of them were required to

take any action in response to any such demands. such actions have not been taken for the reasons. among others. that performance thereof was impossible or frustrated, and that any obligation of any of the defendants with regard thereto terminated for the reasons set forth in the affirmative defenses and counterclaims more fully hereinafter set forth.

30. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 38 of the complaint except deny that Aeron Aviation Resources. Inc. and EBY Capital Corp. are parties to the MOU.

WITH RESPECT TO THE FIRST CAUSE OF ACTION

31. Defendants answer paragraph 39 of the complaint by repeating and realleging their admissions and denials as set forth herein with respect to paragraphs 1 through 38 inclusive of the complaint.

32. Deny each and every allegation contained in paragraphs 30 and 41 of the complaint.

WITH RESPECT TO THE SECOND CAUSE OF ACTION

33. Defendants answer paragraph 42 of the complaint by repeating and realleging their admissions and denials as set forth herein with respect to paragraph 1 through 41 inclusive of the complaint.

34. Deny each and every allegation contained in paragraphs 43 through 45 inclusive of the complaint.

WITH RESPECT TO THE THIRD CAUSE OF ACTION

35. Defendants answer paragraph 46 of the complaint by repeating and realleging their admissions and denials as set forth herein with respect to paragraphs 1 through 45 inclusive of the complaint.

36. Deny each and every allegation contained in paragraphs 47 and 48 of the complaint.

WITH RESPECT TO THE FOURTH CAUSE OF ACTION

37. Defendants answer paragraph 49 of the complaint by repeating their admissions and denials as set forth herein with respect to paragraph 1 through 48 inclusive of the complaint.

38. Deny each and every allegation contained in paragraph 50 of the complaint.

39. Admit the allegations contained in paragraph 51 of the complaint.

40. Deny each and every allegation contained in paragraph 52 of the complaint.

WITH RESPECT TO THE FIFTH CAUSE OF ACTION

41. Defendants answer paragraph 53 of the complaint by repeating and realleging their admissions and denials as set forth herein with respect to paragraphs 1 through 52 inclusive of the complaint.

42. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 54 of the complaint.

43. Deny each and every allegation contained in paragraphs 55 through 56 inclusive of the complaint.

WITH RESPECT TO THE SIXTH CAUSE OF ACTION

44. Defendants answer paragraph 57 of the complaint by repeating and realleging their admissions and denials as set forth herein with respect to paragraphs 1 through 56 inclusive of the complaint.

45. Deny each and every allegation contained in paragraphs 58 through 60 of the complaint.

WITH RESPECT TO THE SEVENTH CAUSE OF ACTION

46. Defendants answer paragraph 6 I of the complaint by repeating and realleging their admissions and denials as set forth herein with respect to paragraphs 1 through 60 inclusive of the complaint.

47. Deny each and every allegation contained in paragraphs 62 through 6-t inclusive of the complaint.

WITH RESPECT TO THE EIGHTH CAUSE OF ACTION

48. Defendants answer paragraph 65 of the complaint by repeating and realleging their admissions and denials as set forth herein with respect to paragraphs 1 through 64 inclusive of the complaint.

49. Deny each and every allegation contained in paragraphs 66 through 68 inclusive of the complaint.

WITH RESPECT TO THE NINTH CAUSE OF ACTION

50. Defendants answer paragraph 69 of the complaint by repeating and realleging their admissions and denials as set forth herein with respect to paragraph 1 through 68 inclusive of the complaint.

51. Deny each and every allegation contained in paragraph 70 of the complaint and refer to the MOU for the terms, conditions and legal effect thereof.

52. Deny each and every allegation contained in paragraph 71 of the complaint and refer to the facility letter for the terms, conditions and legal effect thereof.

53. The allegations contained in paragraph 72 of the complaint constitute legal conclusions to which no response is required from defendants.

54. Deny each and every allegation contained in paragraph 73 of the complaint

FIRST AFFIRMATIVE DEFENSE

55. At all times between the execution of the MOU through in or about April, 1997, performance of so much of the MOU as called for the registration of clear title to certain aircraft in the name of the plaintiff and registration of first priority mortgages on those aircraft in favor of the plaintiff was rendered impossible by actions taken or omitted by representatives of the Government of Venezuela, all as more fully set forth hereinafter in paragraphs 114 through 117.

56. By the time when it was possible to transfer title to Alas Venezuela and tile mortgages in favor of Alas International, it was apparent that Ben Yosef and Galactic Enterprises Ltd. had not performed certain obligations under the MOU on their part to be performed, and that plaintiff and the counterclaim defendants had embarked upon an unlawful scheme, described more fully below, which included the institution of criminal proceedings against certain of defendants and others, to force defendants into submission and to seize control of the airline.

57. At all relevant times, the Minister of Transportation and Communications stated his intention to refuse to allow the deregistration of the aircraft from the Venezuelan registry and the export of the aircraft out of Venezuela.

SECOND AFFIRMATIVE DEFENSE

58. The complaint seeks relief affecting title to, registration and export of, and mortgages upon, aircraft registered in Venezuela that can only be implemented by means of the exercise of discretion and the performance by officials within the Government of the Republic of Venezuela. As such, and to that extent, the complaint seeks relief that is barred by the Act of State Doctrine.

THIRD AFFIRMATIVE DEFENSE

59. The equitable relief sought by plaintiff is barred by the doctrine of unclean hands.

FOURTH AFFIRMATIVE DEFENSE

60. The equitable relief sought by plaintiff is barred by principles of estoppel.

FIFTH AFFIRMATIVE DEFENSE

61. To the extent the complaint seeks equitable relief, it fails to state a cause of action upon which relief may be granted inasmuch as adequate remedies exist at law.

SIXTH AFFIRMATIVE DEFENSE

62. The Court lacks in personam jurisdiction over Corporación Alas de Venezuela, C.A.

SEVENTH AFFIRMATIVE DEFENSE

63. This action cannot proceed in the absence of one or more indispensable parties.

EIGHTH AFFIRMATIVE DEFENSE

63. Upon information and belief, this action is barred by the champerty of the plaintiff.

NINTH AFFIRMATIVE DEFENSE

65. The relief sought by plaintiff is barred by its fraud.

TENTH AFFIRMATIVE DEFENSE

66. The complaint, and each cause of action contained therein, fails to state a cause of action upon which relief may be granted.

ELEVENTH AFFIRMATIVE DEFENSE

67. Any failure by defendants to perform an\; contractual obligation which plaintiff alleges they were required to perform was justified by the repudiation and breaches of the agreement, including the breaches of the covenant of good faith and fair dealing implied therein, by the plaintiff and the additional defendants on the counterclaims who had such obligations.

TWELFTH AFFIRMATIVE DEFENSE

68. The action against Alas Venezuela is barred by the Statute of Frauds

THIRTEENTH AFFIRMATIVE DEFENSE

69. Service of process was not properly effectuated upon the defendants, This defense is pleaded to preserve defendants' right to relief in connection with the Order of this Court. dated January 20. 1997.

ALLEGATIONS APPLICABLE TO ALL COUNTERCLAIMS

(a) THE PARTIES

70. Counterclaimant. Corporación Alas de Venezuela. C.A. ("Alas Venezuela"). is and at all material times hereinafter mentioned was. a Venezuelan corporation maintaining its executive office in Caracas. Venezuela.

71. Counterclaimant. Nelson Ramiz ("Ramiz"). was a domiciliary and resident of the Republic of Venezuela. and later of Miami. Florida. and is an officer and director of Alas Venezuela. Ramiz is a U.S. citizen.

72. Counterclaimant. Heydhelen Velazquez Morales ("Velazquez"). was a domiciliary and resident of the Republic of Venezuela. and later of Miami. Florida. and is an officer. director and shareholder of Alas Venezuela.

73. Upon information and belief, plaintiff, Alas international Limited (“Alas International”). is and at all material times hereinafter mentioned was, a British Virgin Islands corporation formerly known as Icon Securities Ltd. that was utilized for the purpose of entering into the transactions that are the subject of the counterclaims hereinafter set forth.

74. Upon information and belief, additional defendant on the counterclaims, Zadik Bino (“Bino”), is and at all material times hereinafter mentioned was, a resident and domiciliary of Israel and is an officer, director and/or shareholder of or is otherwise directly or indirectly, financially interested in Alas International.

75. Upon information and belief, additional defendant on the counterclaims, David Massie (“Massie”), is and at all material times hereinafter mentioned was, a resident and domiciliary of England and is an officer, director and/or shareholder of or is otherwise directly or indirectly, financially interested in Alas International.

76. Upon information and belief, additional defendant on the counterclaims, Eldad Ben Yosef (“Ben Yosef”), is and at all material times hereinafter mentioned was, a resident and domiciliary of the State of New York, and is an officer, director and/or shareholder of or is otherwise directly or indirectly, financially interested in Alas International.

77. Upon information and belief, additional defendant on the counterclaims, Franklin Hoet (“Hoet”), is and at all material times hereinafter mentioned was, an attorney licensed to practice law in the Republic of Venezuela, is a member of the law firm of Bentata, Hoet & Associates, and is a resident and domiciliary of the Republic of Venezuela.

78. Upon information and belief, additional defendant on the counterclaims, Bentata, Hoet & Associates (“Associates”), is and at all material times hereinafter mentioned was, a law firm maintaining offices in Caracas, Venezuela and Miami, Florida.

79. Upon information and belief, additional defendant on the counterclaims, Aeron Aviation Resources, Inc. (“Aeron”), is and at all material times hereinafter mentioned was, a corporation formed under the laws of the State of New York, maintains its principal place of business in the State of New York, and is a corporation in which Ben Yosef is, directly or indirectly, financially interested and which he controls.

80. Upon information and belief, additional defendant on the counterclaims, EBY Capital, Inc. (“EBY”), is and at all material times hereinafter mentioned was, a corporation formed under the laws of the State of Delaware, maintains its principal place of business in the State of New York, and is a corporation in which Ben Yosef is, directly or indirectly, financially interested and which he controls.

81. Upon information and belief. additional defendant on the counterclaims. Galactic Enterprises Ltd. (“Galactic,” and together with Alas International, Bino. Massie. Ben Yosef, Hoet, Associates, Aeron and EBY, the “Counterclaim Defendants”), is and at all material times hereinafter mentioned was, a corporation formed under the laws of the Channel Islands, maintains its principal place of business in Jersey, Channel Islands, and is a corporation in which Ben Yosef, Massie and/or Bino are, directly or indirectly, financially interested. Galactic consented to the jurisdiction of this Court in the MOU.

(b) PRELIMINARY STATEMENT

82. This action arises from the fraudulent and unlawful scheme by certain of the Counterclaim Defendants to induce Alas Venezuela to acquire aircraft and other assets from the receivers of the formerly state-owned and bankrupt Venezuelan airline known as Linea Aeropostal Venezolana (“Aeropostal”) by promising the defendants (and public officials in Venezuela) that plaintiff or other of the Counterclaim Defendants would dedicate the Assets to the operation of an airline in Venezuela and assist in financing the operation of the airline. when in fact they had no such intention. Rather, they intended to cause the aircraft, engines and related parts to be leased or sold for immediate personal profit. Before they could gain possession of the aircraft. however, they learned that the airline then being operated by Ramiz had become profitable. so they embarked upon an oppressive course of conduct designed unlawfully to seize control of the airline.

83. Massie, Bino and Ben Yosef, on their own behalves and on behalf of other Counterclaim Defendants, represented and promised to Ramiz and Velazquez, as well as to various officials and representatives of the Venezuelan Government, including the Minister of Transportation and Communications of the Republic of Venezuela and the Judge who was overseeing the Aeropostal bankruptcy, that they would dedicate Aeropostal's assets to form part of the operation of a domestic airline in Venezuela. Alas Venezuela bid on the assets of Aeropostal pursuant to bid documents, of which Massie, Bino & Ben Yosef were aware, that required the dedication of those assets to form part of the operation of a domestic airline in Venezuela.

84. In furtherance of their scheme, Counterclaim Defendants Galactic and Ben Yosef, acting on their own behalves and on behalf of other Counterclaim Defendants, fraudulently induced Ramiz and Velazquez to enter into the MOU and Alas Venezuela to enter into the Facility Letter, as vehicles by which they could obtain Aeropostal's assets,

85. The Counterclaim Defendants, however, never intended to fulfill their promises. Instead, they intended initially to sell or lease to others the aircraft and other assets, thereby effectively dismantling the airline.

86. When the Counterclaim Defendants realized that they could not obtain immediate title to and possession of the aircraft and related assets: or bully Ramiz,

Velazquez and Alas Venezuela illegally to export such assets out of Venezuela. the Counterclaim Defendants began a reign of terrorism against the defendants. Criminal actions without basis in law or fact were initiated in Venezuela (where such actions can be commenced by a private citizen without proof. merely by filing a denunciation), by or on behalf of one or more of the Counterclaim Defendants. against Ramiz, Velazquez and American attorney, John Pate (hereinafter "Pate"). whose law and consulting firm provided services to Alas Venezuela and continued to represent Alas Venezuela and Ramiz after disputes arose with the Counterclaim Defendants. The Counterclaim Defendants. or some of them. caused arrest warrants to be issued based upon secret statements. and commenced or caused others to commence duplicative criminal actions in numerous states within Venezuela. as a further tactic of oppression intended to force Ramiz and Velazquez out of Venezuela and keep them separated from and unable effectively to operate the airline.

87. In addition to their blackmail-by-litigation scheme targeting Ramiz. Velazquez and Alas Venezuela. the Counterclaim Defendants engaged in a smear campaign as part of their scheme to bring them to their knees. For example. the Counterclaim Defendants. or some of them. took out full page advertisements in the Venezuelan newspapers. falsely accusing Aeropostal of flying unsafe airplanes. and attempted to ruin Aeropostal's trade credit for aircraft parts and related inventory and

Aeropostal's ability to engage in transactions to get replacement aircraft, by slanderously accusing Ramiz and Velazquez of thievery.

88. At some point in time unknown to defendants, the Counterclaim Defendants learned of the enormous growth, profitability and success of the airline that was being operated by Ramiz. Upon information and belief, they determined to seize control of the airline from defendants so that they could capture all of its profits. In furtherance thereof, they continued their oppressive tactics against the defendants.

89. Upon information and belief, the fraudulent scheme and reign of judicial terror by the Counterclaim Defendants originated and/or was continued in the State of New York. Ben Yosef met with Hoet, Massie and others here in order to plan and carry out their scheme. Upon information and belief, Ben Yosef approved and/or discussed the scheme with Hoet and other of the Counterclaim Defendants and took steps in furtherance of the scheme here in New York.

90. The funds that the Counterclaim Defendants, or some of them, used fraudulently to induce Ramiz and Velazquez to enter into the MOU, flowed through banks in New York City. In essence, New York was a command post from which the Counterclaim Defendants' fraudulent and criminal scheme was engineered and consummated.

91. The counterclaims alleged herein against the Additional Defendants on the Counterclaims arose out of the transaction of business by one or more of said parties, either in person or through agents, within the State of New York.

(c) THE RELEVANT FACTS

92. Aeropostal went into bankruptcy in 1994. It languished there for two years, hampered by paralyzing labor contracts and inefficiencies borne of government ownership. The Venezuelan government wanted to sell the company, but the price it set was too high, the liabilities of the company were too great, and no one was buying.

93. Finally, in 1996, the bankruptcy receivers changed their strategy. Rather than sell the company outright, they conceived of a sale of the assets required to operate the airline. A sale of assets would free the prospective purchasers from the liabilities and debts of the company. Such assets included nine McDonnell-Douglas DC-9 aircraft, three spare engines, some spare parts, the right to the name Aeropostal, and the rights to obtain valuable commercial routes, lease contracts and operating space at various airports in Venezuela. Such assets are herein collectively referred to as the "Assets".

94. Ramiz, who had previous experience in the aircraft industry and was a resident of Venezuela, anticipated that the Assets could be purchased for approximately

\$20 million and turned into an operating airline. He met with two of the three receivers of the Aeropostal bankruptcy, and engaged the law and consulting firm of De Sola & Pate to provide assistance to Alas Venezuela in purchasing the Assets.

95. Ramiz conferred with Ben Yosef as well as other potential financiers relative to financing the acquisition of the Assets, ultimately agreeing to conclude the transaction with Ben Yosef and his associates. Ben Yosef brought in Massie and Bino as financial partners in connection with this matter.

96. Ben Yosef, Massie and Bino agreed to provide financing for the acquisition of the Assets of Aeropostal and for the start-up of the airline either individually or through one or more of their corporate interests.

97. An operator of a Venezuelan airline is required to be 51% owned, controlled and managed by Venezuelan nationals. Accordingly, Ramiz proposed that Alas Venezuela, a dormant Venezuelan corporation, could be used as the vehicle to acquire the Assets and operate the airline.

98. Ramiz appeared at an August 21, 1996 meeting of the mass of creditors of Aeropostal and declared his willingness on behalf of Alas Venezuela to bid on the Assets and Alas Venezuela's intention to use the Assets in the operation of a Venezuelan airline.

99. Pursuant to the bid rules published by the Bankruptcy Court, earnest money of \$1 million together with a declaration by the bidder of its intention to run the airline had to be deposited with the Bankruptcy Court by prospective bidders on or before August 30, 1996. The bid rules specified that the purchaser of the Assets was required to agree to dedicate the Assets to the operation of an airline in Venezuela. Thus, the bid documents required as a condition to bidding that the successful bidder would have to:

Offer Conditions

Accept and commits, in case of winning the bid, to stipulate in the public sale document for the aircraft and engines that form part of the assets that the owner to whom the property rights over said assets are conveyed is obligated to dedicate them within the period of thirty (30) days from the date of said public document to form part of the operation of a national, commercial, regular, domestic airline for the public transportation of people, freight and mail in accordance with the requirements for service based on the national domestic demand and other terms and conditions established by the Ministry of Transportation and Communications in the respective operating permits.

100. Failure to comply with the above-cited obligation would cause the winning bidder to forfeit the option for valuable commercial routes, airport lease contracts and operating spaces. Even more significant, failure to comply with this obligation combined with a failure to remove all the tangible assets from the location where they were maintained within a further thirty days would lead to forfeiture of the \$1 million deposit and the aircraft and other assets as well. Because it was effectively impossible to remove the Assets within the said period, the failure to demonstrate to the satisfaction of the

Bankruptcy Court the intention to dedicate the Assets to the operation of an airline was tantamount to forfeiture of the \$1 million deposit and such other assets.

101. The political climate in Venezuela and the political circumstances surrounding the promulgation of the bid rules for the sale of the Assets also made it an inescapable fact that the Assets would have to be dedicated to the operation of such an airline. Specifically, Aeropostal had been a government-owned airline. The sale of its assets would constitute a privatization of a state-owned enterprise. Moreover, the privatization of Aeropostal was the first significant privatization of a state-owned enterprise since the election of the Caldera government, which had pledged itself to such privatization. The bankruptcy of Aeropostal was closely watched, and the decision to privatize Aeropostal was a highly political one supported by the governing political party but opposed by the largest opposition political party in Venezuela. To make such privatization palatable to the general public, it was important to make an effort to keep the privatized assets in the form of an operating airline serving the Venezuelan public. Put otherwise, it would have been an embarrassment to the governing party if, as a result of the sale of the Assets, Aeropostal had not recommenced operations as an airline serving the Venezuelan people.

102. Nevertheless, the bankruptcy receivers for Aeropostal were not empowered to promulgate domestic transportation policy, and their power to direct the operation of

the airline with the acquired Assets was non-coercive. The coercive function was reserved to the Ministry of Transportation and Communications, which alone had the power to register and deregister aircraft, record encumbrances on them, and allow or refuse their deregistration and export from Venezuela.

103. This precise political, legal and contractual situation described above was explained to and, upon information and belief, was known by the Counterclaim Defendants. Upon information and belief, the aforesaid situation was also long previously specifically known to Ben Yosef and generally to others actively engaged in the airfinance community.

104. With full knowledge of such rules and the political realities of acquiring the Assets, the Counterclaim Defendants agreed in August, 1996 to finance or arrange the financing of the payment of the \$1 million bid deposit required by the receivers. This was done even before these parties had entered into any written agreement with respect to the terms and the purpose of their business relationship inter se.

105. Alas Venezuela turned out to be the only qualified bidder to participate in the auction. As the successful bidder, Alas Venezuela had to pay the complete purchase price within thirty days.

106. At various times during September, 1996, Ramiz and others acting on his behalf met with various government officials in Caracas. In particular, on or about September 26, 1996, Ramiz, Pate, Bino, Massie, Ben Yosef, one of the receivers and others all met with the Minister of Transportation and Communications, General Moises Orozco Graterol. The Minister specifically told them that the Government of Venezuela -- which alone wields the power to determine whether any aircraft could be registered or deregistered and imported into or exported out of the country -- would require that the successful bidder dedicate the Assets to the operation of an airline in Venezuela and Bino, Massie and Ben Yosef expressly indicated their understanding of that obligation and their intention to carry it out.

107. Indeed, during the closing meeting on the night of September 27, 1996, in Caracas, Bino specifically declared to the Judge presiding over the Aeropostal bankruptcy, his intention to dedicate the Assets to the operation of an airline in Venezuela when he stated, in words or in substance that, in addition to the numerous businesses he owned in Israel, he would now have an airline in Venezuela.

108. Within a day or two of the meeting described above, certain of the Counterclaim Defendants entered into the MOU and the so-called Facility Letter, both of which were prepared by Massie.

The MOU

109. The MOU dated September 26, 1997, signed only by Ramiz Velazquez, Ben Yosef and Galactic, and not by Alas Venezuela, provides at paragraph I that Galactic “has procured that US \$20 million is available for the purpose” of enabling Alas Venezuela to purchase the assets of Aeropostal from the Bankruptcy Court. It further provides that the \$20 million debt would be canceled by the “transfer of title of the aircraft and other assets to Alas International”. MOU, Schedule 2. A copy of the MOU is annexed to the complaint as Exhibit “A” and is deemed a part hereof.

110. The MOU made specific provision for operation of the Assets as an airline to be called Aeropostal. The MOU assigned to Ramiz, among other responsibilities, the co-ordination of all negotiations in relation to Aeropostal and the formulation by October 15, 1996 of a full business plan for Aeropostal. MOU ¶ 8(a); 10(a).

111. Alas International agreed to make supplementary monthly advances of US \$20,000 to Alas Venezuela for up to six months in order to facilitate Alas Venezuela’s payment of the expenses of operating the airline. MOU ¶ 12(a) and (b).

The Facility Letter

112. The second agreement is dated September 27, 1996 and is referred to therein and herein as the "Facility Letter." The Facility Letter, executed by Alas International and Alas Venezuela after the MOU, sets forth the terms and conditions upon which Alas International was prepared to make available to Alas Venezuela a loan of up to \$21 million in connection with the acquisition of the Assets.

113. Upon information and belief, the \$20 million purchase price for the Assets was advanced by Galactic and/or Alas International for the account of Alas Venezuela through wire transfers via Citibank in New York City and Caracas that originated or otherwise passed through Citibank in New York City.

Efforts to Consummate the Transaction

114. After Alas Venezuela paid the \$20 million purchase price to the Bankruptcy Court, the long, difficult process of consummating the transaction began. There were many difficulties that, although known to Alas International, it chose to ignore. For example, the MOU contemplated transfer of title to certain of the Assets to Alas International, but Alas Venezuela could not transfer title to the Assets to Alas

International until Alas Venezuela itself acquired title. That process was substantially delayed through no fault of Alas Venezuela,

115. Encumbrances on the aircraft in favor of Banco Industrial de Venezuela (“BIV”) and the Fondo de Inversiones de Venezuela (Venezuelan Investment Fund or “FIV”) needed to be satisfied and canceled following payment of the purchase price for the Assets to the Bankruptcy Court, In addition. the three receivers began to have disputes among themselves and were substantially delayed in approving certain documentation and they acknowledged that they did not have possession of two of the engines.

116. Other difficulties only became know later. Public sector workers and then the Venezuelan court workers went on strike at the beginning of October 1996. and stayed on strike until November 5. 1996. As a result of the foregoing. there were no government workers available to perform the tasks relating to the entry of the necessary orders of the Bankruptcy Court,

117. On the first day on which the Court was back in session after the strike. the Bankruptcy Judge in the Aeropostal case was recused. The recusal of the judge meant that the receivers were unable to settle their obligations to the prior encumbrancers of the aircraft because there was no judge available to act and approve measures necessary to

effectuate such settlements and transfer “clean” title to the aircraft from the bankrupt estate to Alas Venezuela. A new judge did not begin to function until late in April, 1997

118. During the intervening approximately three months between the closing of the sale of the Assets to Alas Venezuela on September 27, 1996 and the end of December, 1996, the true intentions of the Counterclaim Defendants not to operate the airline became clear. Indeed, as early as October, 1996, the unmistakable actions of Ben Yosef and Massie demonstrated that the Counterclaim Defendants had previously formed an intention not even to consider operating the airline.

119. Ramiz, true to his obligation under the MOU, produced a detailed business plan for the operation of the airline. He traveled to New York City to present it to Ben Yosef on or about October 15, 1996, as required by the MOU. The business plan was a thick, bound document containing forecasts, plans, etc.

120. Without reading, let alone studying, the business plan, Ben Yosef tossed it aside and declared in words or substance: “This will never work.”

121. Following this evidence of Ben Yosef's betrayal, Ben Yosef and Massie began to press for the export of two of the aircraft to an airline in Colombia in which, upon information and belief, one or more of the Counterclaim Defendants had a financial

interest. Simultaneously, Aeron, a company controlled by Ben Yosef, offered all of the aircraft for sale or lease on the Internet and Aeron offered to lease up to four of the aircraft to Hawaiian Airlines.

122. Ramiz, who did not yet have knowledge of the fraudulent scheme of the Counterclaim Defendants, feared that if he tried to export the aircraft, it would not only prejudice the certification of the airline, but it also could possibly expose him, as the manager of the company, to charges of fraud by the Venezuelan government.

123. Around this time, Ben Yosef demanded that Ramiz give up the hangars and other airport facilities necessary to operate the airline and to fire the airline employees. Ramiz refused.

124. Shortly thereafter, Ramiz started receiving calls and visits from persons interested in acquiring title to or possession of the aircraft who were sent to Venezuela by one or more of the Counterclaim Defendants.

125. During this time, in a deliberate and fraudulent attempt to circumvent the obligation of Alas Venezuela to operate the airline, and to defraud the government into permitting the export of two aircraft, Ben Yosef instructed Ramiz to tell the government

that the airline was in the process of leasing two substitute airplanes which was in fact untrue. Ramiz refused to participate in such fraudulent misconduct.

126. Payment of the \$20,000 per month to Alas Venezuela as required by the MOU for the operation of the airline was not made.

127. At some point in time, the Counterclaim Defendants learned that the operation of the airline was a success and was likely to be very profitable.

128. Apparently, as a result of such knowledge, the Counterclaim Defendants ceased their efforts to dismantle the airline and turned their efforts to wresting control of the airline for themselves.

The Reign of Terror Begins

129. Thereafter, in or about December, 1996, the Counterclaim Defendants devised and began consummating a scheme to intimidate and harass the defendants and others associated with them in order to cause the defendants to abandon their rights under the MOU, capitulate to the extortionate demands of the Counterclaim Defendants, and relinquish control over the airline to them

130. In an effort to seize control of the profitable airline operations from Ramiz and Velazquez. Ben Yosef offered \$2 million for Ramiz' equity in Alas Venezuela and threatened that he and his associates would destroy him and his wife if he did not accept the offer. Ramiz refused

131. One or more of the Counterclaim Defendants retained Venezuelan attorney Hoet. a partner in Associates. a Caracas. Venezuela law firm.

132. In furtherance of the scheme. Hoet. acting in concert with the other of the Counterclaim Defendants and other attorneys inside and outside of Hoet's law firm in Venezuela. commenced and carried on a reign of terror against the defendants and others in Venezuela pursuant to which they and/or persons acting on their behalves commenced multiple criminal actions in various states within the Republic of Venezuela against Ramiz. Velazquez and others associated with them.

133. Upon information and belief. Hoet and/or others acting in concert with him took steps to commence a criminal case in the Thirty Second Court of First Instance in Caracas, upon information and belief. based on allegations arising out of the transactions that are the subject of the MOU. This case was assigned directly to Judge Castetiada. Judge Castetiada determined in July. 1997. however. that no cause existed to pursue this

criminal case and closed the case. Judge Casteñada's determination was automatically sent to the Fourteenth Superior Court of Caracas for review.

134. Upon information and belief. Hoet and/or others acting in concert with him persuaded the Fourteenth Superior Court of Caracas to reverse the decision of Judge Castetiada and to issue a bench warrant for the immediate arrest of Ramiz, Velazquez and Pate. in violation of governing procedure which required the case to be remanded to the original criminal court of first instance for the issuance of an order that they submit to the Court's jurisdiction for trial. This bench warrant was in violation of their rights to a hearing and to be free on personal recognizance pending a trial of the criminal charges. and the Supreme Court of Venezuela so ruled.

135. Upon information and belief. Hoet and/or others acting in concert with him immediately caused the commencement of other criminal actions and the issuance of further warrants for the arrest of Ramiz. Velazquez and Pate. This created a conflict of jurisdiction among the various courts in which such criminal actions were commenced which could only be resolved by the Supreme Court of Venezuela.

136. Upon information and belief. the criminal complaints or their equivalent by which the criminal actions referenced above were commenced. were based in whole or in part on allegations in substance that the defendants or some of them. failed to fulfill and

perform obligations under the MOU that the plaintiff alleges herein the defendants were required to perform.

137. After the issuance of the bench warrants by the Superior Court of Caracas. Ramiz, Velazquez and Pate applied to the Supreme Court of the Republic of Venezuela in September, 1997 for: (i) a resolution of the conflict of jurisdiction so that all pending criminal actions would be consolidated into a single criminal court, and (ii) a Writ of Amparo (the "Amparo"). by which they petitioned the Supreme Court of Venezuela in substance to declare the arrest warrants issued by the Superior Court to be a nullity and in violation of their constitutional rights.

138. In or about December 1997, the Supreme Court of Venezuela issued decisions: (i) consolidating all criminal actions pending at the date of the application for consolidation into one court. and (ii) a Writ of Amparo declaring the arrest warrants to be a nullity and in violation of the constitutional rights of Ramiz. Velazquez and Pate.

139. Upon information and belief, anticipating that the Supreme Court would rule in favor of Ramiz, Velazquez and Pate in both aforesaid applications. and in or about October, 1997, Hoet and/or others acting in concert with him commenced other criminal proceedings against Ramiz. Velazquez and Pate in a criminal court in Valencia. State of Carabobo. This criminal action was instituted after the application for the Writ of

Amparo and after the application for the writ of consolidation. and included other criminal charges that could make Ramiz, Velazquez and Pate ineligible to be free on their own recognizance. Therefore, the Valencia action was not affected by the Writ of Amparo or the order of consolidation and the arrest warrants issued therein remain unaffected by the aforementioned rulings of the Supreme Court of Venezuela.

140. In addition. the Counterclaim Defendants commenced or caused to be commenced a series of civil actions against Alas Venezuela in which they sought a judgment declaring that Alas International owned or was entitled to own a controlling, instead of a minority. interest in Alas Venezuela. and an order appointing a court officer whom plaintiff would control to oversee the operations and participate in the management of Alas Venezuela.

141. So confident were the Counterclaim Defendants that they would succeed in their scheme to seize control of the airline that Hoet began seeking individuals to operate the airline. stating that they will control the airline in a matter of weeks.

142. The conduct of the Counterclaim Defendants was wanton, willful and malicious.

FIRST COUNTERCLAIM

Fraud – Rescission

143. Counterclaimants repeat and reallege each and every allegation contained in paragraphs 70 through 141 above as if fully set forth herein.

144. In furtherance of their fraudulent scheme more fully discussed above. Massie, Bino and Ben Yosef, individually and on behalf of the other Counterclaim Defendants, on and prior to September 26, 1996, represented to Ramiz and Velazquez and the Minister of Transportation and Communications, the receivers and the Judge who was overseeing the bankruptcy case of Aeropostal, that they intended to dedicate and utilize the Assets in the operation of an airline in Venezuela. Moreover, Bino, individually and on behalf of other Counterclaim Defendants, represented to Ramiz and Velazquez that he would arrange for additional financing for the operation of the airline.

145. These representations were false when made.

146. These representations were made with fraudulent intent, in order to induce Ramiz and Velazquez to enter into the MOU and Alas Venezuela to enter into the Facility Letter, and to induce Alas International to promise representatives of the Venezuelan government that the Assets would be dedicated to the operation of an airline.

147. Ramiz and Velazquez, by entering into the MOU, and Alas Venezuela, by entering into the Facility Letter, justifiably relied upon these representations.

148. Ramiz and Velazquez relied to their detriment on said representations.

149. Ramiz and Velazquez do not have an adequate remedy at law

150. By reason of the foregoing, Ramiz and Velazquez are entitled to a judgment rescinding the MOU.

SECOND COUNTERCLAIM

Fraud – Damages

151. Counterclaimants repeat and reallege each and every allegation contained in paragraphs 70 through 142 and 144 through 148 above as if fully set forth herein.

152. By reason of the foregoing, Ramiz and Velazquez have suffered damages.

153. By reason of the foregoing, Ramiz and Velazquez are entitled to a money judgment in an amount to be determined by the trier of fact.

154. By reason of the foregoing, punitive damages should be assessed against the Counterclaim Defendants.

THIRD COUNTERCLAIM

**Breach of Implied Covenant
of Good Faith and Fair Dealing**

155. Counterclaimants repeat and reallege each and every allegation contained in paragraphs 70 through 14 I above as if fully set forth herein.

156. By reason of the foregoing, Galactic and Ben Yosef breached the implied covenant of good faith and fair dealing inherent in the MOU.

157. By reason of the foregoing, Ramiz and Velazquez have suffered damages

158. By reason of the foregoing, Ramiz and Velazquez are entitled to a money judgment in an amount to be determined by the trier of fact.

FOURTH COUNTERCLAIM

False Imprisonment

159. Counterclaimants repeat and reallege each and every allegation contained in paragraphs 70 through 142 above as if fully set forth herein.

160. The Counterclaim Defendants and/or others acting on their behalves commenced the criminal actions and sought and obtained the bench warrants for the arrest of Ramiz Velazquez and Pate and took the other actions more fully set forth above with the intent of causing harm to them and their associates, without justification, in order to cause Ramiz and Velazquez to abandon their interest in Alas Venezuela and/or to cause Alas Venezuela to abandon its ownership interests in Aeropostal, and for them to abandon their rights and claims against the Counterclaim Defendants.

161. Incarceration in Venezuela entails a risk of death or injury to one's person. It has been reported that on average, one prisoner is murdered in a Venezuelan prison each day. Only one-third of the prisoners in Venezuelan prisons have been convicted; the other two-thirds are awaiting, or are in the process of, trial.

162. The issuance of the arrest warrants deprived Ramiz and Velazquez of their liberty in that, among other things, they were unable to return to Venezuela except upon risk of incarceration and were and are in fear of their liberty and safety.

163. By reason of the foregoing, Ramiz and Velazquez have suffered damages.

164. By reason of the foregoing, Ramiz and Velazquez are entitled to a money judgment in an amount to be determined by the trier of fact.

165. By reason of the foregoing, punitive damages should be assessed against the Counterclaimant Defendants.

FIFTH COUNTERCLAIM

Intentional Infliction of Emotional Distress

166. Counterclaimants repeat and reallege each and every allegation contained in paragraphs 70 through 142, 161 and 162 above as if more fully set forth herein.

167. The extreme and outrageous conduct of the Counterclaim Defendants constituted a deliberate, malicious and unlawful campaign to harass Ramiz and Velazquez

and was intended to cause severe emotional distress, or was done in disregard of a substantial probability that such conduct would cause severe emotional distress.

168. The conduct of the Counterclaim Defendants did cause severe emotional distress and anguish to Ramiz and Velazquez.

169. Velazquez and Ramiz (who are husband and wife) and their children have been forced into exile from Venezuela and are attempting to run the business of Aeropostal from outside the country, unable to return to their home, family, and friends in Venezuela except upon risk of imprisonment, and have since August of 1997 lived in exile, not knowing if or when they can safely return home.

170. By reason of the foregoing, Ramiz and Velazquez have suffered damages

171. By reason of the foregoing, Ramiz and Velazquez are entitled to a money judgment in an amount to be determined by the trier of fact.

172. By reason of the foregoing, punitive damages should be assessed against the Counterclaim Defendants.

SIXTH COUNTERCLAIM

Negligent Infliction of Emotional Distress

173. Counterclaimants repeat and reallege each and every allegation contained in paragraphs 70 through 141, 161, 162 and I69 above as if fully set forth herein.

174. The conduct of the Counterclaim Defendants described above endangered the physical safety of, and caused severe emotional distress and anguish to, Ramiz and Velazquez.

175. The conduct of the Counterclaim Defendants was negligent

176. By reason of the foregoing, Ramiz and Velazquez have suffered damages.

177. By reason of the foregoing, Ramiz and Velazquez are entitled to a money judgment in an amount to be determined by the trier of fact.

SEVENTHCOUNTERCLAIM

Intentional Infliction of Economic Harm

178. Counterclaimants repeat and reallege each and every allegation contained in paragraphs 70 through 142, 161, 162 and 169 above as if fully set forth herein.

179. As alleged more fully above, the actions of the Counterclaim Defendants were intended to cause, and did cause, economic harm to Ramiz and Velazquez, without excuse or justification, by a series of acts that might otherwise be lawful.

180. As a result of being forced into exile and the other unlawful conduct of the Counterclaim Defendants alleged above, Ramiz and Velazquez have had (i) to incur the additional expenses of maintaining a home in Miami, Florida since August 1997, with its attendant expenses, at a monthly cost of approximately 520,000, (ii) to acquire transportation for themselves and their family at a cost of approximately \$100,000, (iii) to incur moving costs, and (iv) to incur additional expenses and have suffered additional damages.

181. By reason of the foregoing, Ramiz and Velazquez are entitled to a money judgment in an amount to be determined by the trier of fact.

182. By reason of the foregoing, punitive damages should be assessed against the Counterclaim Defendants.

EIGHTH COUNTER -

Abuse of Process

183. Counterclaimants repeat and reallege each and every allegation contained in paragraphs 70 through 142, 161, 162 and 169 above as if fully set forth herein.

184. Upon information and belief, the Counterclaim Defendants commenced or caused the commencement of the civil and criminal proceedings as aforesaid and sought and obtained the issuance of the arrest warrants, with the intent to harm Ramiz and Velazquez, without excuse or justification, and to obtain the collateral advantages more fully described above.

185. The process unlawfully interfered with the persons and property of Ramiz and Velazquez.

186. The Counterclaim Defendants unlawfully utilized the process against Ramiz and Velazquez.

187. By reason of the foregoing abuses of process. Ramiz and Velazquez sustained damages.

188. By reason of the foregoing. Ramiz and Velazquez are entitled to a money judgment in an amount to be determined by the trier of fact.

189. By reason of the foregoing, punitive damages should be assessed against the Counterclaim Defendants.

NINTH COUNTERCLAIM

Tortious Interference with Contract

190. Counterclaimants repeat and reallege each and every allegation contained in paragraphs 70 through 142 above as if fully set forth herein.

191. The Counterclaim Defendants had knowledge of the agreement among the parties concerning the financing and operation of the airline.

192. The Counterclaim Defendants, other than Galactic and Ben Yosef, intentionally induced Galactic and Ben Yosef to breach their obligations with regard to the financing and operation of the airline.

193. By reason of the foregoing, Ramiz and Velazquez have suffered damages

194. By reason of the foregoing, Ramiz and Velazquez are entitled to a money judgment in an amount to be determined by the trier of fact.

195. By reason of the foregoing, punitive damages should be assessed against the Counterclaim Defendants other than Galactic and Ben Yosef.

TENTH COUNTERCLAIM

Tortious Interference with Prospective Business Advantages

196. Counterclaimants repeat and reallege each and every allegation contained in paragraphs 70 through 142 above as if fully set forth herein.

197. As alleged more fully above, the Counterclaim Defendants engaged in the use of wrongful and/or unlawful means to secure a collateral advantage over Ramiz and Velazquez in their business, and/or acted for the sole purpose of inflicting harm upon them.

198. By reason of the foregoing, Ramiz and Velazquez have suffered damages.

199. By reason of the foregoing, Ramiz and Velazquez are entitled to a money judgment in an amount to be determined by the trier of fact.

200. By reason of the foregoing, punitive damages should be assessed against the Counterclaim Defendants.

ELEVENTH COUNTERCLAIM

Prima Facie Tort

201. Counterclaimants repeat and reallege each and every allegation contained in paragraphs 70 through 142, 161, 162, 169 and 180 hereof as if fully set forth herein.

202. As alleged more fully above, the Counterclaim Defendants intended to and did inflict intentional harm and damages upon Ramiz and Velazquez, without excuse or justification, by a series of acts that might otherwise be lawful.

203. By reason of the foregoing, Ramiz and Velazquez are entitled to a money judgment in an amount to be determined by the trier of fact.

204. By reason of the foregoing, punitive damages should be assessed against the Counterclaim Defendants.

WHEREAS, defendants Nelson Ramiz, Heydhelen Emilia Velazquez Morales, and Corporación Alas de Venezuela, C.A. demand judgment as follows:

(a) dismissing the complaint in its entirety:

(b) on the First Counterclaim, in favor of Ramiz and Velazquez rescinding the MOU;

(c) on the Second Counterclaim, in favor of Ramiz and Velazquez and against the Counterclaim Defendants, for compensatory damages and punitive damages in amounts to be determined by the trier of fact:

(d) on the Third Counterclaim, in favor of Ramiz and Velazquez and against Ben Yosef and Galactic, for compensatory damages in an amount to be determined by the trier of fact;

(e) on the Fourth Counterclaim, in favor of Ramiz and Velazquez and against the Counterclaim Defendants, for compensatory damages and punitive damages in amounts to be determined by the trier of fact;

(f) on the Fifth Counterclaim, in favor of Ramiz and Velazquez and against the Counterclaim Defendants, for compensatory damages and punitive damages in amounts to be determined by the trier of fact;

(g) on the Sixth Counterclaim, in favor of Ramiz and Velazquez and against the Counterclaim Defendants, for compensatory damages in an amount to be determined by the trier of fact:

(h) on the Seventh Counterclaim. in favor of Ramiz and Velazquez and against the Counterclaim Defendants. for compensatory damages and punitive damages in amounts to be determined by the trier of fact:

(i) on the Eighth Counterclaim, in favor of Ramiz and Velazquez and against the Counterclaim Defendants. for compensatory damages and punitive damages in amounts to be determined by the trier of fact;

(j) on the Ninth Counterclaim, in favor of Ramiz and Velazquez and against the Counterclaim Defendants other than Galactic and Ben Yosef, for compensatory damages and punitive damages in amounts to be determined by the trier of fact;

(k) on the Tenth Counterclaim. in favor of Ramiz and Velazquez and against the Counterclaim Defendants, for compensatory damages and punitive damages in amounts to be determined by the trier of fact;

(l) on the Eleventh Counterclaim. in favor of Ramiz and Velazquez and against the Counterclaim Defendants. for compensatory damages and punitive damages in amounts to be determined by the trier of fact: and

(m) granting such other, further and different relief as to this Court may seem just and proper, together with the costs and disbursements of this action.

Dated: New York, New York
February 9, 1998

Yours, etc.

FELTMAN, KARESH, MAJOR & FARBMAN
LIMITED LIABILITY PARTNERSHIP
Attorneys for Defendants
Office and P.O. Address:
Carnegie Hall Tower
152 West 57th Street
New York, New York 10019
Tel.: (212) 586-3800

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

ALAS INTERNATIONAL LIMITED, : Index No. 601817/97
Plaintiff, : FIRST AMENDED ANSWER AND
-against- : COUNTERCLAIMS OF DEFENDANT
NELSON RAMIZ, HAYDHELM EMILIA : VELAZQUEZ MORALES
VELASQUEZ UORALES, and CORPORACION : I.A.S. Part 53
ALAS DE VENEZUELA, C.A., : Justice Charles E. Ramos
Defendants, :
-and- :
ZADIK BINO, DAVID MASSIE, ELDAD :
BEN YOSEF, FRANKLIN HOET, :
BENTATA, HOET & ASSOCIATES, :
AERON AVIATION RESOURCES, INC., :
EBY CAPITAL, INC., and GALACTIC :
ENTERPRISES LTD. :
Additional Defendants :
on the Counterclaims. :

-----X

Defendant Heydhelen Emilia Velazquez Morales, sued
incorrectly herein as Haydelm Velasquez Morales ("Velazquez"), by
her attorneys Doar Devorkin & Rieck, for her first amended answer
to the complaint and counterclaims, alleges:

1-204. For these paragraphs, she repeats and realleges
each of the allegations of the answer and counterclaims filed on
her behalf by Feltman, Karesh, Major & Farbman, L.L.P., as if set
forth in full herein.

FOURTEENTH AFFIRMATIVE DEFENSE

205. The Court lacks in personam jurisdiction over the
defendant Velasquez.

FIFTEENTH AFFIRMATIVE DEFENSE

206. The actions are barred by the statute of frauds.

SIXTEENTH AFFIRMATIVE DEFENSE

207. The actions are barred by the doctrine of forum non
conveniens.

SEVENTEENTH AFFIRMATIVE DEFENSE

208. The relief sought by the plaintiff is barred by the
principles of waiver.

EIGHTEENTH AFFIRMATIVE DEFENSE

209. The action are barred because the documents on which
the plaintiff relies omit material terms and are not enforceable.

NINETEENTH AFFIRMATIVE DEFENSE

210. The action are barred and any contract which the
plaintiff seeks to enforce may not be enforced because the
defendants were induced to enter any contract by statements of the
plaintiff and its agents which were false and misleading or which
omitted material terms which were necessary to make its statements
not false and misleading, which statements were intended to mislead
and injure defendants and to induce them to enter into contracts
with plaintiff.

TWENTIETH AFFIRMATIVE DEFENSE

211. The actions are barred, and any contract which the
plaintiff seeks to enforce may not be enforced, because the
defendants were induced to enter any contract by statements of the
plaintiff and its agents which they knew or should have known were
untrue, inaccurate, and misleading or which omitted material facts

necessary to make the statements true, accurate and not misleading, and were made without due regard for the truth or accuracy thereof, which statements were intended to mislead and injure defendants and to induce them to enter into contracts with plaintiff.

TWENTY-FIRST AFFIRMATIVE DEFENSE

212. Upon information and belief, plaintiff is doing business in New York without a license or other authority of the State of New York, and thus is barred from bringing this action.

WHEREFORE, defendant Heydhelen Emilia Velazquez Morales demand judgment as follows:

(a) dismissing the complaint in its entirety;

(b) on the First Counterclaim, in favor of Ramiz and **Velaquez** rescinding the MOU;

(c) on the Second Counterclaim, in favor of Ramiz and Velasquez and against the Counterclaim Defendants, for compensatory damages and punitive damages in amounts to be determined by the trier of fact;

(d) on the Third Counterclaim, in favor of Ramiz and Velazques and against Ben Yosef and Galactic, for compensatory damages in an amount to be determined by the trier of fact;

(e) on the Fourth Counterclaim, in favor of Ramiz and Velazquez and against the Counterclaim Defendants, for compensatory damages and punitive damages in amounts to be determined by the trier of fact;

(f) on the Fifth Counterclaim, in favor of Ramiz and Velasquez and against the Counterclaim Defendants, for compensatory

damages and punitive damages in amounts to be determined by the trier of fact;

(g) on the Sixth Counterclaim, in favor of Ramiz and Velazquez and against the Counterclaim Defendants, for compensatory damages in an amount to be determined by the trier of fact;

(h) on the Seventh Counterclaim, in favor of Ramiz and Velazquez and against the Counterclaim Defendants, for compensatory damages and punitive damages in amounts to be determined by the trier of fact;

(i) on the Eighth Counterclaim, in favor of Ramiz and Velazquez and against the Counterclaim Defendants, for compensatory damages and punitive damages in amounts to be determined by the trier of fact;

(j) on the Ninth Counterclaim, in favor of Ramiz and Velazquez and **againat** the Counterclaim Defendants other than Galactic and Ben Yosef, for compensatory damages and punitive damages in amounts to be determined by th trier of fact;

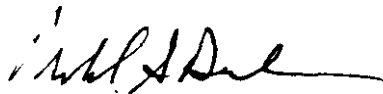
(k) on the Tenth Counterclaim, in favor of Ramiz and Velazquez and against the Counterclaim Defendants, for compensatory damages and punitive damages in amounts to be determined by the trier of fact;

(l) on the Eleventh Counterclaim, in favor of Ramiz and Velazquez and against the Counterclaim Defendants, for compensatory damages and punitive damages in amounts to be determined by the trier of fact; and

6

(m) granting such other, further and different relief as to this Court may seem just and proper, together with the costs and disbursements of this action.

Dated: **New York, New York**
March 4, 1998



Michael S. Devorkin
Doar Devorkin & Rieck
Attorneys for Defendant
Heydhelen **Emilia**
Velazquez **Morales**
233 Broadway, 10th Floor
New York, New York 10279
(212) 619-3730

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ALAS INTERNATIONAL LIMITED,

Plaintiff,

-against-

NELSON RAMIZ, HAYDHELM EMILIA
VELASQUEZ MORALES, and
CORPORACIÓN ALAS DE VENEZUELA, C.A.,

Defendants.

-and-

ZADM BINO, DAVID MASSIE, ELDAD BEN YOSEF,
FRANKLIN HOET.
BENTATA, HOET & ASSOCIATES,
AERON AVIATION RESOURCES, INC.
EBY CAPITAL, INC. and GALACTIC ENTERPRISES LTD.,

Additional Defendants
on the Counterclaims.

x

Index No. 601817/97

IA Part 53
Justice Ramos

REPLY TO
COUNTERCLAIMS

COUNTY

MAR 0 3 1990

NOT COMPARED
WITH COPY FILED

x

Plaintiff Alas International Limited and Counterclaim Defendants David Massie,
Eldad Ben-Yosef, Zadik Bino, Aeron Aviation Resources, Inc., EBY Capital, Inc. and Galactic
Enterprises Ltd. (the 'Counterclaim Defendants'), by their undersigned counsel, Winthrop,
Stimson, Putnam & Roberts, for their reply to the Counterclaims:

FIRST DEFENSE

70. Admit the allegations in Paragraph 70, except deny having knowledge or information sufficient to form a belief as to the location of the executive offices of Alas Venezuela.

71. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 71.

72. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 72.

73. Admit the allegations in Paragraph 73.

74. Admit the allegations in Paragraph 74 except aver that Bino is not an officer or shareholder of Alas International.

75. Admit the allegations in Paragraph 75 except aver that Massie is not a shareholder of Alas International.

76. Admit the allegations in Paragraph 76.

77. Admit except aver that the name of Dr. Hoet's law firm in Venezuela is Bentata Hoet & Asociados.

78. Admit that Bentata Hoet & Asociados is a law firm with offices in Caracas, Venezuela and on information and belief deny that said firm maintains offices in Miami.

79. Admit the allegations in Paragraph 79.

80. Admit the allegations in Paragraph 80.

81. Aver that Galactic is a corporation formed under the laws of the British Virgin Islands, admit that Galactic maintains its principal place of business in Jersey, Channel

Islands, admit that Galactic submitted to the jurisdiction of this Court in the MOU, admit that Maasie and Bino are financially interested in Galactic, and deny the remaining allegations in Paragraph 81.

82. Deny the allegations in Paragraph 82.

83. Deny the allegations in Paragraph 83.

84. Deny the allegations in Paragraph 84.

85. Deny the allegations in Paragraph 85.

86. Deny the allegations in Paragraph 86.

87. Deny the allegations in Paragraph 87.

88. Deny the allegations in Paragraph 88.

89. Deny the allegations in Paragraph 89.

90. Deny the allegations in Paragraph 90.

91. Deny the allegations in Paragraph 91.

92. Deny that they have knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 92.

93. Admit that the bankruptcy receivers determined to sell certain assets, some of which are referred to in Paragraph 93 of the Counterclaims, and deny having knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 93.

94. Deny that they have knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 94.

95. Deny the allegations in Paragraph 95.

96. Deny the allegations in Paragraph 96.

97. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 97, admit that Ramiz proposed that certain use be made of Alas Venezuela in connection with the acquisition of the Assets, and deny the remaining allegations in Paragraph 97.

98. Deny, upon information and belief, the allegations in Paragraph 98.

99. Admit that a \$1 million deposit was required to bid, deny the remaining allegations in paragraph 99, and aver that the quoted excerpt from the bid conditions is materially inaccurate because it omits text necessary to understand the meaning of the quoted excerpt.

100. Deny, upon information and belief, the allegations in Paragraph 100.

101. Deny the allegations in Paragraph 101.

102. Admit that the bankruptcy receivers for Aeropostal had no power to promulgate Venezuelan transportation policy, admit on information and belief that the Minister of Transportation and Communications has the power to register and deregister aircraft, record encumbrances on them, and allow or refuse deregistration and export from Venezuela, and deny the remaining allegations in Paragraph 102.

103. Deny the allegations in Paragraph 103.

104. Deny the allegations in Paragraph 104.

105. Admit the allegations in Paragraph 105.

106. Admit that a meeting occurred on or about September 26, 1996 among Ramiz, Pate, Bino, Massie, Ben Yosef, one of the receivers, the Minister of Transportation and, possibly, others, and otherwise deny the allegations in Paragraph 106

107. Deny the allegations in Paragraph 107.

108. Admit the allegations in Paragraph 108 and aver that the MOU was reviewed by Pate, Ramiz and Velasquez.

109. Admit that the MOU was dated September 26, 1996 and was signed as alleged; aver that by her signature Velasquez bound Alas Venezuela to the MOU, and respectfully refers the Court to the MOU for the text thereof.

110. Deny the allegations in paragraph 110 of the Counterclaims and aver that the MOU speaks for itself.

111. Deny the allegations in paragraph 111 and aver that the MOU speaks for itself

112. Admit that Alas International and Alas Venezuela entered into the Facility Letter dated September 27, 1996, and aver that the Facility Letter speaks for itself and respectfully refers the Court to the text thereof

113. Deny the allegations in Paragraph 113.

114. Admit that, among other things, the MOU required that title to the Assets be transferred to Alas International and that Alas Venezuela paid \$20 million to the Bankruptcy Court, and deny the remaining allegations in paragraph 114 of the Counterclaim.

115. Admit that there may have been purported encumbrances against certain of the Assets and deny having knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 115.

116. Admit that there was a strike in last quarter of 19% and deny having knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 116.

117. Deny having knowledge or information ~~sufficient~~ to form a belief as to the truth of the allegations in Paragraph 117.

118. Deny the allegations in Paragraph 118, and aver that the intentions of the Counterclaim Defendants at all times were as set forth in the MOU.

119. Admit that on or about October 15, 1996 ~~Ramiz~~ met with Ben-Yosef in New York to discuss a draft business plan, and deny the remaining allegations in Paragraph 119.

120. Admit that Ben-Yosef stated in substance that the draft business plan was not workable and deny the remaining allegations in Paragraph 120.

121. Deny the allegations in Paragraph 121 and aver that from the inception of the transaction described in the MOU Ben-Yosef agreed with Ramiz that certain aircraft would be offered for lease to Air Republica of Columbia and Hawaiian Airlines, and that Ben-Yosef has an indirect financial interest in Air Republica.

122. Deny the allegations in Paragraph 122.

123. Aver that Paragraph 123 is too vague to require a responsive pleading in that it does not specify an antecedent to the phrase "Around this time" and deny the allegations in Paragraph 123.

124. Aver that Paragraph 124 is too vague to require a responsive pleading in that it does not specify the time meant by "Shortly thereafter" and aver that inspectors from Air Republica and Hawaiian Airlines visited the aircraft to inspect them, pursuant to discussions between Ben-Yosef and Ramiz.

125. Deny the allegations in Paragraph 125.

126. Deny the allegations in Paragraph 126.

127. Deny the allegations in Paragraph 127.

128. Deny the allegations in Paragraph 128.

129. Deny the allegations in Paragraph 129.

130. Deny the allegations in paragraph 130 of the Counterclaims, and aver that in the course of settlement negotiations being conducted on a “without prejudice” basis **Ben-Yosef** suggested that one component of a settlement might include a **\$2** million settlement payment to **Ramiz**.

131. Deny the allegations in Paragraph 131 and aver that Alas International engaged **Bentata Hoet & Asociados**.

132. Deny the allegations in Paragraph 132.

133. Deny the allegations in Paragraph 133.

134. Deny the allegations in Paragraph 134.

135. Deny the allegations in Paragraph 135.

136. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 136.

137. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 137.

138. Deny the allegations in Paragraph 138.

139. Deny the allegations in Paragraph 139.

140. Admit that Alas International commenced civil litigation in Venezuela relating to its rights as a shareholder of Alas Venezuela under Venezuelan civil law and respectfully refer the Court to the pleadings and papers in such lawsuit.

141. Deny the allegations in paragraph 141.

142. Deny the allegations in Paragraph 142.

- 143. Incorporate and reallege their answers to Paragraphs 70 - 141.
- 144. Deny the allegations in Paragraph 144.
- 145. Deny the allegations in Paragraph 145.
- 146. Deny the allegations in Paragraph 146.
- 147. Deny the allegations in Paragraph 147.
- 148. Deny the allegations in Paragraph 148.
- 149. Deny the allegations in Paragraph 149.
- 150. Deny the allegations in Paragraph 150.
- 151. Incorporate and reallege their answers to Paragraphs 70 – 142 and 144 -

148.

- 152. Deny the allegations in Paragraph 152.
- 153. Deny the allegations in Paragraph 153.
- 154. Deny the allegations in Paragraph 154.
- 155. Incorporate and reallege their answers to Paragraphs 70 - 141.
- 156. Deny the allegations in Paragraph 156.
- 157. Deny the allegations in Paragraph 157.
- 158. Deny the allegations in Paragraph 158.
- 159. Incorporate and reallege their answers to Paragraphs 70 - 142.
- 160. Deny the allegations in Paragraph 160.
- 161. Deny having knowledge or information sufficient to form a belief as to the

truth of the allegations in Paragraph 161.

- 162. Deny the allegations in Paragraph 162.
- 163. Deny the allegations in Paragraph 163.

- 164. Deny the allegations in Paragraph 164.
- 165. Deny the allegations in Paragraph 165.
- 166. Incorporate and reallege their answers to Paragraphs 70 – 142,161 and

162.

- 167. Deny the allegations in Paragraph 167.
- 168. Deny the allegations in Paragraph 168.
- 169. Deny the allegations in Paragraph 169.
- 170. Deny the allegations in Paragraph 170.
- 171. Deny the allegations in Paragraph 171.
- 172. Deny the allegations in Paragraph 172.
- 173. Incorporate and reallege their answers to Paragraphs 70 – 141, 161, 162

and 169.

- 174. Deny the allegations in Paragraph 174.
- 175. Deny the allegations in Paragraph 175.
- 176. Deny the allegations in Paragraph 176.
- 177. Deny the allegations in Paragraph 177.
- 178. Incorporate and reallege their answers to Paragraphs 70 – 142, 161, 162

and 169.

- 179. Deny the allegations in Paragraph 179.
- 180. Deny the allegations in Paragraph 180.
- 181. Deny the allegations in Paragraph 181.
- 182. Deny the allegations in Paragraph 182.

183. Incorporate and reallege their answers to Paragraphs 70 – 142,161, 162
and 169.

184. Deny the allegations in Paragraph 184.

185. Deny the allegations in Paragraph 185.

186. Deny the allegations in Paragraph 186.

187. Deny the allegations in Paragraph 187.

188. Deny the allegations in Paragraph 188.

189. Deny the allegations in Paragraph 189.

190. Incorporate and reallege their answers to Paragraphs 70 - 142.

191. Deny the allegations in Paragraph 191.

192. Deny the allegations in Paragraph 192.

193. Deny the allegations in Paragraph 193.

194. Deny the allegations in Paragraph 194.

195. Deny the allegations in Paragraph 195.

196. Incorporate and reallege their answers to Paragraphs 70 - 142.

197. Deny the allegations in Paragraph 197.

198. Deny the allegations in Paragraph 198.

199. Deny the allegations in Paragraph 199.

200. Deny the allegations in Paragraph 200.

201. Incorporate and reallege their answers to Paragraphs 70 – 142, 161, 162,
169, 180.

202. Deny the allegations in Paragraph 202.

203. Deny the allegations in Paragraph 203.

204. Deny the allegations in Paragraph 204.

SECOND DEFENSE

205. Defendants' claims are barred in whole or in part because the each of the Counterclaims fail to state a claim upon which relief may be granted. Counterclaim Defendants intend to rely on Venezuelan law with respect to the fourth through eleventh counterclaims.

THIRD DEFENSE

206. Defendants' claims are barred in whole or in part because Counterclaim Defendants owed no duty to Defendants.

FOURTH DEFENSE

207. This Court lacks personal jurisdiction over Zadik Bino, David Massie, Franklin Hoet, and Bentata Hoet & Asociados.

FIFTH DEFENSE

208. To the extent that Defendants' Counterclaims seek to have this Court adjudicate the validity of criminal or civil proceedings in Venezuela they are barred by the Act of State Doctrine.

SIXTH DEFENSE

209. The Venezuelan courts have exclusive jurisdiction to adjudicate the fourth through eleventh counterclaims.

SEVENTH DEFENSE

210. Defendants' claims are barred in whole or in part by the Parol Evidence Rule

EIGHTH DEFENSE

211. Defendants' claims are barred in whole or in part by the Statute of Frauds.

NINTH DEFENSE

212. The acts of Plaintiff and of the Counterclaim Defendants were based upon bona fide business reasons.

TENTH DEFENSE

213. Defendants' are estopped from seeking the remedies sought in the Counterclaims.

ELEVENTH DEFENSE

214. Defendants' claims for equitable relief are barred by their own unclean hands.

TWELFTH DEFENSE

215. Defendants' claims are barred in whole or in part because the relief sought would result in their unjust enrichment.

THIRTEENTH DEFENSE

216. Defendants are not entitled to the remedy of rescission because the status quo ante cannot be restored.

FOURTEENTH DEFENSE

217. Defendants have failed to plead fraud "in detail" as required by CPLR 3016(b).

FIFTEENTH DEFENSE

218. The Counterclaims fail to allege the substance of foreign law upon which the Defendants rely, as required by CPLR 3016(e).

SIXTEENTH DEFENSE

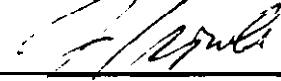
219. Defendants' claims for equitable relief are barred by their laches.

WHEREFORE, Counterclaim Defendants demand judgment:

- (i) dismissing the Counterclaims with prejudice and denying each and every request for relief set forth therein;
- (ii) awarding them the costs and disbursements of this action; and
- (iii) granting them such other and further relief as the Court may deem just and equitable.

Dated: New York, New York
March 2, 1998

WINTHROP, STIMSON, PUTNAM & ROBERTS

By: 

One Battery Park Plaza
New York, NY 10004-1490
(212) 858-1000

Attorneys for Counterclaim Defendants
Alas International Limited, David Massie, Eldad Ben –
Yosef, Zadik Bino, Aeron Aviation Resources, Inc., EBY
Capital, Inc. and Galactic Enterprises Ltd.



REPUBLICA DOMINICANA

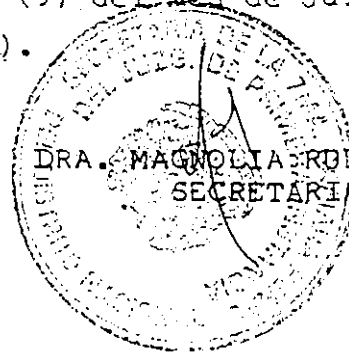
SERVICIO JUDICIAL



En dicho expediente el Estado Dominicano está constituido en parte civil representado por el DR. RAMON TAPIA ESFINAL.

El mencionado expediente actualmente se encuentra en la Cámara Penal de la Corte de Apelación de Santo Domingo, para conocer de un incidente procesal presentado por los abogados defensores de los SRES. FORFIRIO NICOLAS LOPEZ TAVERAS, RAFAEL PARTENIO ORTIZ OBJIO, JOSE DA VID VARGAS LESLIE Y HUGO BUENO PASCAL, de fecha 8/2/96

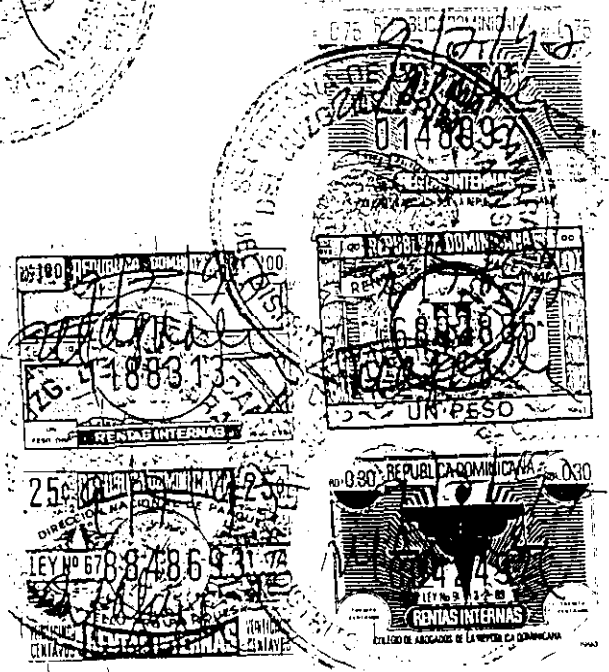
La presente CERTIFICACION se expide a solicitud de parte interesada, en la Ciudad de Santo Domingo, Distrito Nacional, Capital de la República Dominicana, hoy día Nueve (9) del mes de Julio del año Mil Novecientos Noventa y Siete (1997).

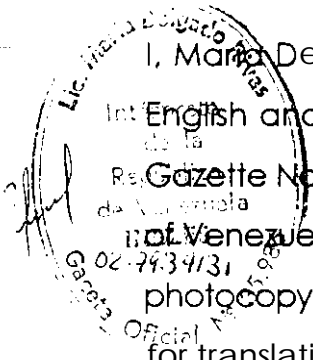


DRA. MAGNOLIA RUIZ GONZALEZ,
SECRETARIA.

LIQUIDACION POR LEY 417.-/
 Certificación...RD\$0.30
 Una foja.....RD\$0.15
 TotalRD\$0.45

PODER JUDICIAL
PAGO DE IMPUESTOS
LEY 33-91
 VALOR RES 30.00
 Recibo No. 11953
Magnolia Ruiz
 SECRETARIA





I, María Delgado-Rivas, Qualified Public Translator, Republic of Venezuela in the English and Spanish languages, according to accreditation published in Official Gazette No. 35,986 on June 21 st. 1996, and Translator/Interpreter, Central University of Venezuela, class of 1988, hereby certify that the document attached hereto, a photocopy of the original instrument, written in Spanish, has been submitted to me for translation, and the following is a true and correct English version thereof:

[Coat of Arms and seal of the Judicial Service, Law No. 417)

“Dominican Republic
Judicial Service

I, Dr. Magnolia Ruiz Gonzalez, Secretary of the Seventh Criminal Chamber, Trial Court, National District,

Do Hereby Certify:

That in the records on the Secretary's Office entrusted to me there is a criminal file, numbered 1002-87 concerning defendants Porfirio Nicolás López Taveras; Rafael Partenio Ortiz Obiio; Jose David Varaas Leslie; Huao Bueno Pascal, and fugitives Charles Willis and Nelson Ramis, due to violation of Articles 59, 60, 169, 170, 171, 405, 408 of the Dominican criminal code: Article 102, constitutional law, Dominican Republic; Article 7 of Law 672 and Law 252 against Compañía Dominicana de Aviación and/or the Dominican State. Said fugitives are being prosecuted for refusal to appear in this Seventh Criminal Chamber, pursuant to related laws (notices, writs, and publications in major newspapers) by virtue of Articles 334 and further, Dominican code of criminal procedure, which states: 'Article 334: If, following decision by the Judge [chamber of characterization of a criminal action] to subpoena the defendant, said defendant cannot be captured or shall not appear in court within ten (10) days following a notice served at his home address: if, after having appeared or being captured, defendant shall evade the chief justice, then the chief justice or a judge replacing him shall issue a subpoena with a ten (10) day deadline, warning thereby that defendant shall be found a

defaulter and shall be deprived of his citizen rights, that a criminal complaint shall be filed against him and every person shall be bound to inform about the whereabouts of defendant. Said subpoena shall further state the malfeasance and the bench warrant.'

In said file, the Dominican State has been established in a civil procedure represented by Dr. Ramón Tapia Espinal.

The aforementioned file is on the Criminal Chamber, Court of Appeals, Santo Domingo, to hear a proceeding, dated February 8, 1996, started by defense attorneys of Porfirio Nicolás Lopez Taveras; Rafael Partenio Ortiz Objio; Jose David Vargas Leslie and Hugo Bueno Pascal.

This certification is issued at the request of the party concerned in Santo Domingo, National District, capital city of the Dominican Republic, on this ninth day of July, nineteen hundred ninety-seven (1997.)

(Sgd.), Dr. Magnolia Ruiz Gonzalez. Secretary. (Seal of the Secretary's Office.)


Fees under Law 417:

Certification...RD\$0.30

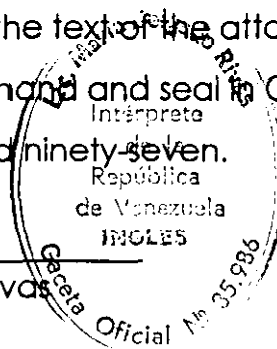
One sheet...RD\$0.15

Total...RD\$0.45" (Seal of the Judiciary which does certify payment of taxes under Law 33-91 and five revenue stamps.)

The above is a faithful English translation of the text of the attached document. IN WITNESS WHEREOF, I have hereunto set my hand and seal in Caracas, Venezuela, this sixteenth day of July, nineteen hundred ninety-seven.



María Delgado-Rivas
G.O 35,986





SERVICIO JUDICIAL LET No. 417

Pagado la suma de RD\$ 0.454

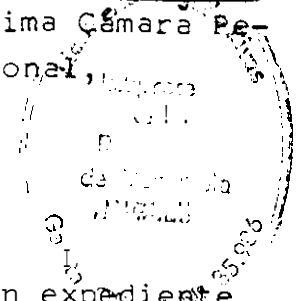
Con Recibo No. 0050753

Fecha 9/7/97

REPUBLICA DOMINICANA

SERVICIO JUDICIAL de Rentas Internas No. 6

YO, DRA. MAGNOLIA RUIZ GONZALEZ, Secretaria de la Séptima Cámara Penal de? Juzgado de Primera Instancia del Distrito Nacional,



C E R T I F I C C :

Que en los archivos de la secretaria MI cargo existe un expediente criminal marcado con el No. 1002-87 a cargo de los acusados PORFI- RIO NICOLAS LOPEZ TAVERAS, RAFAEL PARTENIO ORTIZ OBJIO, JOSE DAVID VARGAS LESLIE, HUGO BUENO PASCAL y los profugos CHARLES WILLIS Y - NELSON RAMIS, por violación a los artículos 59, 60, 169, 170, 171, 405, 408 del código penal dominicano, 102 de la ley constitucional de la República Dominicana, artículo 7 de la ley 672 y ley 252, en perjuicio de la compañía DOMINICANA DE AVIACION y/o ESTADO DOMINI- CANO, a dichos prófugos se les sigue un juicio en contumacia en és ta Séptima Cámara Penal, de conformidad con lo establecido por la- ley de la materia (notificaciones, autos y publicaciones en un pe- riodico de circulación nacional) en virtud de lo que establecen - los artículos 334 y siguientes del código de procedimiento criminal dominicano, el cual dice textualmente así: artfculo 334 "Cuando des pués de la deliberación del Juez de Instrucción (cámara de califica ción) enviando al procesado al tribunal criminal, el acusado no pu diere ser aprehendido o no se presentare dentro de los dies (10) - días de la notificación que se le hubiese hecho a él en su domici- lio o cuando después de haberse presentado o de haber sido aprehen dido evadiese al presidente del tribunal de primera instancia, y - a falta de él, el Juez que haga sus veces proveera un auto mandan- do que se presente en un plazo de diez (10) días, bajo aperçibimi- ento de que será declarado rebelde a la ley, suspenso del ejercicio de sus derechos de ciudadano, que se procederá contra él y que to- da persona está obligada a indicar el lugar donde él se hallare. - En ese auto se herá además mención del crimen y del mandamineto de captura.

1. Maria Delgado-Rivas. Qualified Public Translator, Republic of Venezuela in the English, and Spanish languages, according to accreditation published in Official Gazette No. 35,986 on June 21st, 1996, and Translator/Interpreter, Central University of Venezuela, class of 1988. hereby certify that the document attached hereto, a photocopy of the original instrument, written in Spanish, has been submitted to me for translation, and the following is a true and correct English version thereof:

"Affidavit

The undersigned, Carmen Yolanda de la Cruz Cabreja and Eddy Garcia-Godoy, citizens of the Dominican Republic, of legal age, married, attorneys-at-law, bearers of identity and electoral cards Number 001-0096768-6 and 001-0097689-3, respectively, domiciled and residents of this city of Santo Domingo, National District, and with an office located on the fifth floor, Bank of Nova Scotia, John F. Kennedy Avenue with Lope de Vega Avenue, in this city of Santo Domingo, National District, Dominican Republic, do hereby declare, with all legal consequences hereof, as follows: 1. That it is known that the Seventh Criminal Chamber, Trial Court, National District, is in the possession of a file concerning Porfirio Lopez Taveras: Paternio Ortiz; David Vargas Leslie; Hugo Bueno Pascal, and fugitives Charles Willis and Nelson Ramis, due to violation of Articles 59, 60, 169, 171, 405, and 408 of the Criminal Code; Article 102. Constitution of the Dominican Republic: Article 7 of Law 672 and Law 252 against Compañía Dominicana de Aviación (C.D.A.) and/or the Dominican State and/or the agent thereof: 2. That Articles 59 and 60, Criminal Code, Dominican Republic, provide for as follows: 'Article 59.- Accomplices in a crime or offense shall be imposed an immediately lesser penalty than that for the active parties of this crime or offense, except otherwise provided for by law. Article 60.- Accomplices in an action labelled as crime or offense subject to punishment shall be those persons who, due to gifts, promises, threats, abuse of position or authority, conspiracy or plot, spark this action or instruct to do so; those who, knowingly, supply weapons or tools, or provide means to conduct a malfeasance:

those who, knowingly, help or assist the active party or parties of a malfeasance in those facts which prepared or facilitated such action, or those who conducted same, without detriment of sanctions hereunder against active parties of plots or threats to domestic and external state security, even if the crime intended by conspirators or instigators was not committed.' 3. That Articles 169 and 171, Criminal Code, Dominican Republic provide for as follows: 'Officials or employees appointed by the relevant authority, charged with the responsibility of collecting, receiving income and other monies, accounting for similar securities or paying and repaying public funds, shall deposit and remit government assets, account for same, and return unused balances, for such times and upon such term provided for by laws and regulations. Officials or employees appointed by the relevant authority to preserve, guard, or sell post stamps, domestic revenue stamps, or official stamped paper shall remit the proceeds thereof and account for those materials still in their possession for such time and upon such term provided for by the Executive Branch. Likewise, officials who guard and are responsible for, under the law or the relevant authority, lands, buildings, tools, furniture, equipment, materials, supplies and other securities, shall account for same for such times and upon such term provided for by laws and regulations. Article 171.- Appropriation by any official or employee, of monies, property, supplies, or securities to use same for such purposes other than the purposes for which said securities were delivered or entrusted: or failure, negligence, or refusal to account for received monies, post stamps, documentary stamps, official stamped paper, lands, buildings, tools, furniture, equipment, materials, supplies, and any other securities shall be a proof, prima facie, of embezzlement.' 4. That Article 405, Criminal Code, Dominican Republic, does establish as follows: 'Article 405.- Fraud offenders shall be, and as such they shall be punished with correctional imprisonment from six months to one year and a fine amounting to two hundred pesos: 1- those persons who, by making use of alleged names and positions or by fraudulent means, assure of the existence

of false companies, fictitious credits, or powers they do not have, in order to defraud, totally or partially, foreign assets, by making or trying to make others deliver to them assets, banknotes or treasury notes, and any other government-issued securities, property, obligations including promises, disposal, release, or acquittal; 2 those persons who, with the same aim, raise hopes or fear of an accident or any unreal event. Fraud offenders can also be convicted of complete or limited disqualification for positions and offices specified in Article 42, without detriment of the sanctions under the Code for fraud events. Paragraph.- If the facts incriminated herein are to the detriment of the Dominican state or institutions thereof, the culprit shall be punished with imprisonment if fraud does not exceed five thousand pesos: with public duty if malfeasance does involve a higher amount, and, in both cases, the amount involving fraud shall be returned alongside a fine neither lower than this value nor higher than three times that amount.' 5.- That Article 408, Criminal Code, Dominican Republic, does state the following: 'Article 408.- Offenders for breach of trust, and as such are subject to punishment provided for in Article 406. shall be those persons who, to the detriment of owners, bearers, or holders, remove or divert assets, capital, goods, notes, release, or any instrument involving liability or acquittal in the event these things shall be entrusted or handed over as order, deposit, rent, security interest, loan for use, or bailment, or for a duty with or without pay, or in the event, hereunder and in the previous case, the offender shall return or submit the aforementioned thing, or in case of a specific application. If breach of trust has been committed by a person who approached the public in order to obtain, whether on his own, or as a director, manager, or commercial agent, securities as deposit, order, or security interest, the culprit shall be imprisoned and shall pay a fine from five hundred through two thousand pesos. If breach of trust referred to herein has been committed by a public or ministerial official, servant or salaried worker, by a disciple, dependant, worker or employee. to the detriment of the proprietor, master or principal, offender shall be imposed

a penalty from three through ten years of public duty. In no event shall these provisions modify the penalty imposed by Articles 254, 255, and 256, with respect to removed and stolen monies or instruments on public deposits and archives.' 6.

That article 102. Constitution of the Dominican Republic does prescribe the following: Article 102.- Any person who takes government assets for his own benefit

or by capitalizing on his position within state agencies, instrumentalities, or autonomous institutions, obtains economic benefits, shall be imposed with the punishment prescribed by Law. Those persons who give their associates, close relatives, friends or connections some advantages shall also be punished. No

person shall be criminally responsible for a malfeasance committed by another person, either herein or in any case.' 7.-That the undersigned know that pursuant

to the related law, on June 14, 1988, a writ issued on June 8. 1988, by the Chief Justice of the Seventh Criminal Chamber, Trial Court, National District was published on 'El Caribe" newspaper, page 3-A. This writ summons defendants to appear in court within ten (10) days upon service of the notice, and defendants were warned

that in the event of non appearance, they should be found defaulters and prosecuted for refusal to appear in court, and instructed any relevant authority to arrest defendants. 8.- That according to the foregoing, in the event Charles Willis

and Nelson Ramiz shall appear, they shall be apprehended by virtue of the bench warrant contained in the aforementioned writ. 10.- That regardless of corresponding criminal sanctions, the injured party herein, Compañía Dominicana

de Aviación (C.D.A.) and/or the Dominican State, shall request indemnization for appropriate damages and losses. 11.- That prescription of the criminal, public and civil, action shall be implemented after an inaction term longer than ten (10) years;

therefore, the action herein has not become legally unenforceable as the last hearing of this proceeding took place on February 8, 1996. 12.- That to the date of this statement no judgment has been passed on the substance of this legal action:

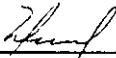
accordingly, same shall be pending litigation.

In Santo Domingo City, National District. Dominican Republic, on this eight (8) day of July, nineteen hundred ninety-seven (1997.)


(Sgd.) Carmen Yolanda de la Cruz Cabreja

(Sgd.) Eddy Garcia-Godoy." (Seal of Grisolia & Bobadilla, S.A.; Santo Domingo, Dominican Republic.)

The above is a faithful English translation of the text of the attached document. IN WITNESS WHEREOF. I have hereunto set my hand and seal in Caracas, Venezuela, this sixteenth day of July. nineteen hundred ninety-seven.

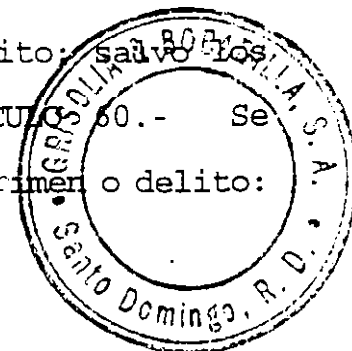


 María Delgado-Rivas
 G.O 35,986



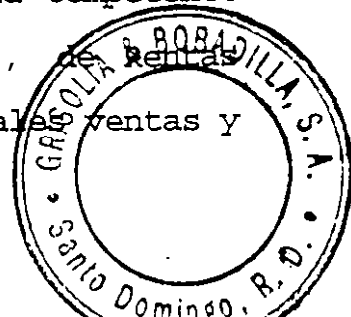
DECLARACION JURADA

Los suscritos, LICENCIADOS CARMEN YOLANDA DE LA CRUZ CABREJA y EDDY GARCIA-GODOY, dominicanos, mayores de edad, casados, abogados, provistos de las cédulas de identidad electoral Nos. 001-0096768-6 y 001-0097689-3, respectivamente, domiciliados y residentes en esta ciudad de Santo Domingo, Distrito Nacional y con estudio profesional abierto en la quinta planta del Edificio del Banco Nova Scotia, sito en la Avenida John F. Kennedy esquina Avenida Lope de Vega, en esta ciudad de Santo Domingo, Distrito Nacional, República Dominicana, DECLARAN, con todas sus consecuencias legales, lo siguiente: 1.- Que es de su conocimiento que la Séptima Cámara Penal del Juzgado de Primera Instancia del Distrito Nacional está apoderada de un expediente a cargo de PORFIRIO LOPEZ TAVERAS, PATERNIO ORTIZ, DAVID VARGAS LESLIE, HUGO BUENO PASCAL y los prófugos CHARLES WILLIS y NELSON RAMIS, por violación de los artículos 53, 60, 169, 171, 405 y 408 del Código Penal, 102 de la Constitución de la República Dominicana y 7 de la Ley 672 y Ley 252, en perjuicio de la Compañía Dominicana de Aviación (C.D.A.) y/o el Estado Dominicano y/o su representante; 2.- Que los artículos 59 y 60 del Código Penal de la República Dominicana disponen lo siguiente: "ARTICULO 59.- Los cómplices de un crimen o de un delito se les impondrá la pena inmediatamente inferior a la que corresponda a los autores de este crimen o delito, salvo los casos en que la ley otra cosa disponga. ARTICULO 60.- Se castigarán como cómplices de una acción calificada crimen o delito:



Cyd
8

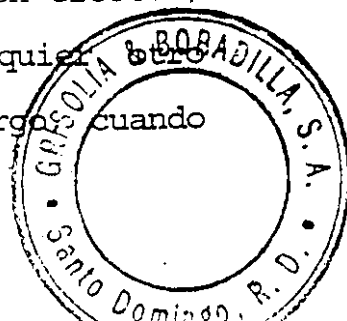
aquellos que por dádivas, promesas, amenazas, abuso de poder o de autoridad, maquinaciones o tramas culpables, provocaren esa acción o dieren instrucción para cometerla; aquellos que, a sabiendas, proporcionaren armas o instrumentos, o facilitaren los medios que hubieren servido para ejecutar la acción; aquellos que, a sabiendas, hubieren ayudado o asistido al autor o autores de la acción, en aquellos hechos que prepararon o facilitaron su realización, o en aquellos que la cons-on, sin perjuicio de las penas que especialmente se establecen en el presente Código, contra los autores de tramas o provocaciones atentatorias a la seguridad interior o exterior del Estado, aún en el caso en que no se hubiere cometido el crimen que se proponían ejecutar los conspiradores o provocadores." ; 3.- Que los artículos 169 y 171 del Código Penal de la República Dominicana disponen lo siguiente: "ARTICULO 169.- Los funcionarios o empleados nombrados por autoridad competente cuyo deber es cobrar, percibir rentas u otros dineros, responder de semejantes valores o pagar y desembolsar fondos públicos, deberán hacer los depósitos y remesas de tales fondos, rendir cuenta de ellos y devolver los balances no gastados de los mismos, dentro del plazo y en la forma y manera prescrita por las leyes y reglamentos. Los funcionarios o empleados nombrados por autoridad competente para conservar, guardar o vender sellos de correos, de rentas Internas o papel sellado, remitirán el producto de tales ventas y



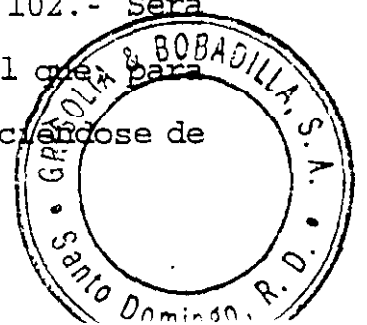
rendirán cuenta de los que quedasen en su poder, y de los cuales son responsables, dentro del periodo y en la forma y manera establecida por el Poder Ejecutivo. De igual modo, los que tengan bajo su guarda y responsabilidad, por la ley o por mandato de autoridad competente, terrenos, edificios, útiles, muebles, equipos, materiales, suministros del y otros valores, rendirán informe y cuenta de ellos dentro del periodo y del modo señalado por las leyes y reglamentos. ARTICULO 171.- La apropiación por parte de cualquier funcionario o empleado, de dinero, propiedad, suministros o valor, para destinarlo a un uso y fin distinto de aquellos para los cuales le fue entregado o puesto bajo su guarda; o la falta, negligencia o negativa a rendir cuenta exacta del dinero recibido, sellos de correos, sellos de Rentas Internas, papel sellado, terrenos, edificios, útiles, muebles, equipos, materiales, suministros, u otras cosas de valor, se tomará como evidencia prima facie de desfalco."; 4.- Que el artículo 405 del Código Penal de la República Dominicana dispone lo siguiente: "Art. 405.- Son reos de estafa, y como tales incurren en las penas de prisión correccional de seis meses a dos años, y multa de veinte a doscientos pesos: 1- los que, valiéndose de nombres y calidades supuestas o empleando manejos fraudulentos, den por cierto la existencia de empresas falsas, de créditos imaginarios, poderes que no tienen, con el fin de estafar a todo o parte de



capitales ajenos, haciendo o intentando hacer, que se les entreguen o remitan fondos, billetes de banco o del tesoro, y cualesquiera otros efectos públicos, muebles, obligaciones que contengan promesas, disposiciones, finiquitos, descargos; 2- los que para alcanzar el mismo objeto hicieran nacer la esperanza o el temor de un accidente o de cualquier otro acontecimiento quimérico. Los reos de estafa podrán ser también condenados a la accesoria de la inhabilitación absoluta o especial para los cargos y oficios de que trata el artículo 42, sin perjuicio de las penas que pronuncie el Código para los casos de falsedad. **Párrafo.-** Cuando los hechos incriminados en este artículo sean cometidos en perjuicio del Estado Dominicano o de sus instituciones, los culpables serán castigados con pena de reclusion si la estafa no excede de cinco mil pesos, y con las de trabajos públicos si alcanza una suma superior, y, en ambos casos, a la devolución del valor que envuelva la estafa y a una multa no menor de ese valor ni mayor del triple del mismo."; 5.- Que el artículo 408 del Código Penal de la República Dominicana dispone lo siguiente: Art. 408.- Son también reos de abuso de confianza y como tales incurren en las penas que trae el artículo 406, los que, con perjuicio de los propietarios, poseedores o detentadores, sustrajeren o distrajeren efectos, capitales, mercancías, billetes, finiquitos o cualquier documento que contengan obligación o que opere descargo, cuando

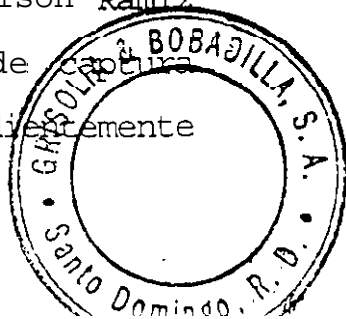
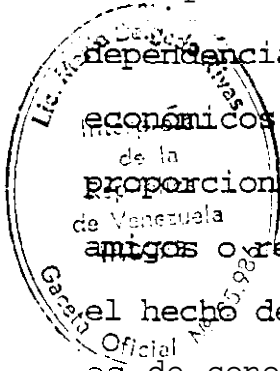


estas cosas les hayan sido confiadas o entregadas en calidad de mandato, depósito, alquiler, prenda, préstamo a uso o comodato para un trabajo sujeto o no a remuneración, y cuando en éste y en el caso anterior exista por parte del culpable la obligación de devolver o presentar la cosa referida, o cuando tenía aplicación determinada. Si el abuso de confianza ha sido cometido por una persona dirigiéndose al público con el objeto de obtener, bien sea por su propia cuenta o ya como director, administrador, o agente de una sociedad o de una empresa comercial o industrial, la entrega de fondos valores a título de depósito, de mandato, o de prenda, la pena en que incurrirá el culpable será la de reclusión y multa de quinientos a dos mil pesos. Si el abuso de confianza de que trata este artículo, ha sido cometido por oficial público o ministerial, por un criado o asalariado, por un discípulo, dependiente, obrero o empleado, en perjuicio de su amo, maestro o principal, se impondrá al culpable la pena de tres a diez años de trabajo públicos. Estas disposiciones en nada modifican la penalidad impuesta por los artículos 254, 255 y 256, con respecto a las sustracciones y robos de dinero o documentos en los depósitos y archivos públicos."; 6.- que el artículo 102 de la Constitución de la República Dominicana dispone lo siguiente: "Art. 102.- Será sancionado con las penas que la ley determine, todo aquel que para su provecho personal sustraiga fondos públicos o prevaleciéndose de



12


sus posiciones dentro de los organismos del Estado, sus dependencias o instituciones autónomas, obtenga provechos económicos. Serán igualmente sancionadas las personas que hayan proporcionado ventajas a sus asociados, familiares allegados, amigos o relacionados. Nadie podrá ser penalmente responsable por el hecho de otro ni en estos casos ni en cualquier otro."; 7.- Que es de conocimiento de los suscritos que de conformidad con lo que dispone la ley que rige la materia, el día 14 de junio de 1988, en el periódico "El Caribe", página 3-A, fué publicado el Auto de fecha 8 de junio de 1988, dictado por el Juez Presidente de la Séptima Cámara Penal del Juzgado de Primera Instancia del Distrito Nacional, mediante el cual principalmente se les ordenó a los acusados Charles Willis y Nelson Ramiz comparecer ante el Juez, en un plazo de diez (10) días a partir de la notificación de dicho Auto y se les advirtió que de no comparecer serían declarados rebeldes a la Ley, juzgados en contumacia y se ordenó que cualquier autoridad competente procediera con la captura de los acusados; 8.- Que en consecuencia con lo antes indicado esta en curso un procedimiento en contumacia contra los nombrados Charles Willis y Nelson Ramiz; 9.- Que en consecuencia con lo antes indicado, en caso de presentarse los nombrados Charles Willis y Nelson Ramiz procedería su detención, en virtud del mandamiento de captura contenido en el auto arriba descrito; 10.- Que independientemente

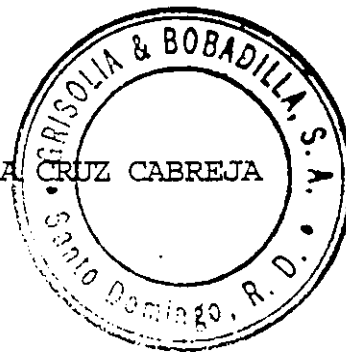


Cyp
 8

de las sanciones penales que correspondan, la parte agraviada en este caso, la Compañía Dominicana de Aviación (C.D.A.) y/o el Estado Dominicano, podrá pedir la reparación de los daños y perjuicios que correspondan; 11.- Que la prescripción de la acción pública y la acción civil en materia criminal opera cuando han transcurrido un lapso de inacción en el proceso de más de diez (10) años, por lo cual en este caso la acción no ha prescrito ya que la última audiencia del presente caso se realizó en fecha 8 de febrero de 1996 ; 12.- Que a la fecha de la presente declaración no ha intervenido una sentencia sobre el fondo del presente caso, estando, en consecuencia, el mismo actualmente pendiente de ser conocido.

En la ciudad de Santo Domingo, Distrito Nacional, República Dominicana, a los ocho (8) días del mes de julio del año mil novecientos noventa y siete (1997).


LIC. CARMEN YOLANDA DE LA CRUZ CABREJA




LIC. EDDY GARCIA-GODOY