

# FERRAIUOLI LLC

Litigation Department

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## **NOTICE TO CLIENTS AND FRIENDS**

Supreme Court of Puerto Rico Decision:

### **Courts are not impeded from issuing summary judgment by the mere allegation of the *rebus sic stantibus* doctrine based on the Puerto Rico economic crisis.**

On November 14, 2014, the Supreme Court of Puerto Rico published a long awaited opinion regarding the *rebus sic stantibus* doctrine, frequently used in collection and foreclosure cases as a defense, in Oriental Bank and Trust v. Perapi, S.E., 2014 T.S.P.R. 133. The Supreme Court concluded that the economic crisis, without more, is not an unforeseeable circumstance that justifies the invocation and application of the exceptional *rebus sic stantibus* doctrine to judicially modify the terms and conditions of a contract. Consequently, courts are not impeded from issuing summary judgment by the mere allegation of *rebus sic stantibus* based on the Puerto Rico economic crisis.

Former creditor Eurobank granted Perapi, S.E., a real estate and construction company, a loan guaranteed by a pledge over several mortgage notes and personal guarantees. Oriental Bank (actual creditor) filed a civil action against Perapi, S.E. for collection of monies and execution of the pledge and mortgages for failure to comply with the loan agreement. Among other allegations, Perapi, S.E claimed that the economic crisis affecting Puerto Rico since the year 2006 was an unforeseeable circumstance responsible for its inability to comply the loan, therefore the court could modify its terms and conditions pursuant to the *rebus sic stantibus* doctrine.

Pursuant to the well-known case of Casera Foods, Inc. v. Estado Libre Asociado de Puerto Rico, 108 D.P.R. 850 (1979), the *rebus sic stantibus* doctrine allows courts to modify pre-existing contractual obligations when their fulfillment becomes too burdensome due to, among other reasons, unforeseen circumstances. *Rebus sic stantibus*, as a basis for reviewing the terms of a contract, arises from various general principles of obligations and contracts, such as good faith, abuse of law and contractual equity. For *rebus sic stantibus* to apply a party must comply, in most instances, with the following criteria: 1) that there be an unforeseen circumstance, a fundamental element, which is a question of fact dependent on each case's circumstances; 2) an extraordinary difficulty, an aggravation of conditions to such a degree that performance would be much more burdensome for the promisor; 3) that risk not be a determining element of the contract, as in the case in aleatory contracts; 4) absence of fraudulent acts by any of the parties; 5) that the contract be projected into the future; 6) the change of circumstances happened after the execution of the contract and be permanent to a certain degree; and 7) a petition by the interested party.

The Supreme Court resolved: 1) the economic crisis is not an unforeseeable event that justifies the invocation and application of the *rebus sic stantibus* doctrine as a defense against the maxim of *pacta sunt servanda* in contractual law; 2) that market fluctuations in an economy are cyclical events that make an economic crisis a foreseeable event; 3) even if an economic crisis was an unforeseeable event, the loan executed between the parties was signed in the year 2007, with knowledge of the economic crisis that began in 2006; and 4) the loan and other collateral documents are commonly executed in the construction industry and debtor was an expert in construction and real estate.

This document has been prepared for information purposes only and is not intended as, and should not be relied upon, as legal advice. If you have any questions or comments or wish to obtain more information please contact us.

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