UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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JANE DOE I, JANE DOE II, JANE DOE III
PLAINTIFFS
AGAINST
EMMANUEL CONSTANT AKA
TOTO CONSTANT
DEFENDANT

______________________________X

MEMORANDUM OF LAW IN SUPPORT OF A MOTION PURSUANT TO RULE 60(b)(4) OF THE FEDERAL RULES OF CIVIL PROCEDURE FOR RELEIF OF A VOID JUDGEMENT.

CASE NO: 04-cv-10108 (SHS)

Defendant Emmanuel Constant, still proceeding prose respectfully submit this memorandum of law in support of a motion for relief of a void judgment. Pursuant to rule 60(B) (4) of the Federal Rules of Civil Procedure file on October 17th, 2007, and as a reply to plaintiffs Jane Doe I, Jane Doe II and Jane Doe III memorandum of Law, opposing Defendant Motion. Defendant motion was timely and with merit. Therefore the forenamed defendant party humbly request complete total and absolute annulment of the entire above entitle matter.

Introduction

Defendant Constant was served with a summons and complaint brought by plaintiffs Jane Doe I, Jane Doe II and Jane Doe III on January 22nd, 2005, as the commander of the "Revolutionary Front for the Advancement and Progress of Haiti" allegedly a paramilitary Organization, Responsible for Human Rights Violation in Haiti.

A default judgment was entered against the defendant on August 16th 2006, for the sum of Nineteen Million Dollars (19.000.000.00) in Punitive Damages. Fourteen months later, on October 17th 2007, the defendant Emmanuel Constant filed a motion to vacate the judgment under rule 60(b) (4) of the FRCP, on the following grounds:

1) The Claim is barred by the applicable statutes of limitations.

2) Plaintiffs failed to exhaust "adequate and available" remedies.

3) The court lack personal Jurisdiction over defendant.

Plaintiffs made no such argument in their original pleading, but filed a Memorandum of Law in opposition to defendant motion to dismiss complaint.

Argument in plaintiff's memorandum of Law is unpersuasive and confirms that, at the time the default judgment was entered, the district court did not have jurisdiction. For all those reasons, the defendant move to vacate the judgment, because it was void in Abs Initio.

Statement of Facts

A. Historical Facts and Background

1-Defendant: Emmanuel Constant aka Toto Constant, is a university graduate with very strong and traditional family principles. He is the proud father of seven (7) children. His professional background includes, but has not been limited to, a number of positions in both the Haitian and American public and private sector. The defendant was the "first assistant "of the Haitian ambassador at the Embassy of Haiti in Ottawa, Canada, in charge of the Commercial Sector. He also served as an advisor, in charge of the "Industrial Investment promotion Office for Haiti "at the mission of Haiti at the United Nation. Mr. Constant participated in various trade and economic delegations around the world, and particularly in the US promoting the social and economic development of Haiti.

Besides serving in the diplomatic sector of Haiti, The defendant also landed his experience and knowledge from the Haitian Public Administration, as chief of Staff for the secretary of Commerce of specialist in Haiti. The defendant also served in n the private sector as a consultant and project studies Specialist, managing several small businesses own by Haitian-American, before going into Real-Estate with a clientele largely Haitian.

2-FRAPH- Front pour L'Avancement et le Progres Haitien

From September 1991 to September 1994, The Republic of Haiti was the scene of a very violent period of Political and Economic chaos, disturbing even more the already fragile social stability of the nation. For a short period, the defendant was in charge of the "Institute Of Social Research". The nation was devastated by an economic and commercial embargo imposed by the international community at the request of deposed, then exiled, President Jean Bertrand Aristide. Violence although partly political, was enhanced by a rising level of poverty. Factories were closed and thousand of Jobs were lost, due to the political instability. Food supplies were very scarce in certain part of the city, and completely absent in others. The death rate among Children was at its peak, due to malnutrition and lack of proper health care. The Defendant thru his old diplomatic contacts tried to bring some relief to an otherwise economically abused population, by opening community centers in various part of the country, creating a distribution network of local and foreign donation of food and agricultural products.

Unfortunately, while this caring initiative was welcome by the underserved area, it was viewed by a specific sector in the government as campaigning. Therefore the defendant as well as the secretary of State, who had endorsed the project, was ordered to resign and all center s was closed.

In August –September 1993, in a desperate attempt to appeal to the international community and President Jean Bertrand Aristides, the defendant, together with several parties and popular grass roots organization, mostly disappointed partisans of the deposed president, decided to form a Front with a clear and specific mission statement.

1. Protest against the economic and commercial embargo.
2. Voice the "Desiderata" and concerns of the entire population.
3. Address the local socio-economic and political issues.
4. Promote peace and reconciliation among the various political ideologies.
5. Bring some relief to the urban and remote population of the country.

The former office of the Institute of Social research and former employees, instantly volunteered to be the front regional representatives. Defendant Constant, like most of the leaders in the country was promoting Democracy and Social being, not violence.

FRAPH, like all the other political organizations present in the country at the time, maintain courteous and political contact with the Haitian Armed Forces, as well as various US agencies, foreign embassies and non-profit organizations.

- FRAPH was legally registered at the department of justice as a political organization.
- FRAPH had no uniform code.
- FRAPH had no military structure.
- FRAPH members were not to carry weapons, as a matter of the party's policy.
- FRAPH had offices throughout the country as well as in the US.
- FRAPH was never part of the Haitian armed forces payroll.
- FRAPH was never an organization acting under the "color of Law"

For all those reasons, the defendant Emmanuel Constant, strongly deny any wrong doing and any direct or indirect participation in the atrocious events surrounding the case of actions of plaintiffs Jane Doe I, Jane Doe II and Jane Doe III.

In conclusion of this section, The defendant would like to inform the Honorable court, that historically and traditionally, all paramilitary organization, or/and militias have been created and commanded by head of States in Haiti, to establish a balance of power against the national armed forces, the latter having a track of record of imposing or forcing legitimate head of state to resign from power, like the V.S.N under President Francois Duvalier, or the S.S.P under President Jean Bertrand Aristide, just to name a few. As a general rule and

principle, regular armed forces always opposed such organizations, because they reduce their Political and Military strength. Observers should not confuse Paramilitary group with "attaches" who are just auxiliaries, carrying official identification.

B. Procedural Facts

On June 1st 1994, a complain was filed in the District Court of the United States, Eastern District, against the Front pour l'Avancement et le Progres d'Haiti (FRAPH). A summons was issued and served to the representative of FRAPH, in New York City. See exhibits (1). The complaint was filed on behalf of Alerte Belance for the same cause of action as the case AL BAR.Alerte Belance v FRAPH. Case 94-cv02619 (EDNY). Defendant Constant never denied his leadership in this organization, and was deposed twice during the litigation of that case. The Defendant would like to bring the court attention to the following points:

1- Cause of action giving in the complaint of Belance v FRAPH, took place in October 16th, 1993

2- The Alerted Belance v FRAPH case was dismissed by the court with prejudice for lack of merit, in an unpublished decision, on December 17th 1999.

3- FRAPH was sued as an Unincorporated Association.

4- FRAPH was served thru its agent in New York (see civil docket for case Exhibits 2).

5- FRAPH was never referred in Belance v FRAPH case as a Paramilitary Organization.

6- Defendant Constant was never referred as "commander" in Belance v FRAPH case.

7- FRAPH activities, as describe were legitimate in New York.

8- No report of threats and physical harm were made, concerning Miss Belance during legislation of her complaint in 1999.

9- Great similarity exit between Belance and Jane Doe III.

10- The name of Organization sued was Front for the Advancement and Progess of Haiti (FRAPH), not the Revolutionary Front for the Advancement and Progress of Haiti.

11- Miss Jennifer Green Esq., who is counsel for Jane Doe I and Jane Doe II, was also one of the counsels for Alerte Belance in 1994. Representing the Center for Constitutional Rights (see exhibits 2, docket 24, 32).

12- Four (4) years after the dismissal of the complaint Belance v FRAPH, a complaint was filed against Defendant Constant in his capacity as the Commander of the Revolutionary Front for the Advancement and Progress of Haiti. Complain was filed by Jane Doe I, Jane Doe II and Jane Doe III, alleging that violence was committed against them by

members of the above organization under the direct order, approval and awareness of the Defendant , but not his personal participation.

13- The Defendant was never the Commander of the Revolutionary Front for the Advancement and Progres of Haiti. He was however second in the leadership for the Front pour L'avancement et le Progress d'Haiti, otherwise known as FRAPH.

On August 16th, 2006, the court entered a default judgment against Defendant Constant. Fourteen (14) months later defendant filed a motion to vacate the judgment pursuant to rule 60 (b) (4) of the FRCP, challenging the court jurisdiction. In opposition to defendant motion plaintiffs and submitted to the court a memorandum of law in October 2007. Plaintiffs of Law agree that:

1- Defendant motion was untimely.

2- Defendant failed to address the default judgment.

3- Pursuant to the law of Equitable Tolling, plaintiff claim was filed within the prescribed statutes of the limitations of the Alien Tort Statutes (ATS) 28 U.S.C S1350 and the Torture Victim Protection Act (TUPA)codified at 28 U.S.C. S1350 Note.

4- Plaintiffs did not exhaust the legal remedies in Haiti, because they are unavailable and inadequate, and the Judiciary system is corrupted and manipulable.

5- Defendant was properly served.

Plaintiffs Memorandum of Law is unpressured and plaintiffs failed to address these issues in a factual manner. In order to prevail in their memorandum, plaintiffs must establish that no dispute exist as to any material facts. "When either subject or personal jurisdiction is contested under rule 60(b) (4), the burden of proof is properly placed on the party asserting that jurisdiction existed. See Lackawanna refuse removal Inc v. Proctor Gamble Paper Product s Co. 86 F.D.R. 330, 332 M. D. PA 1979 (subject Matter Jurisdiction); Rockwell International Corp. V. KND Corp. 83 FRD 556, 559 hi (N. D Texas 1979) (Personal Jurisdiction).

Although Defendant did not raise directly the personal Jurisdiction issue, in the original 60(b) (4) motion submitted on October 17th 2007, Plaintiffs in their memorandum of Law have opened up the issue, which warrant the defendant to assert and additional ground of this jurisdictional question.

Quasi-Jurisdictional facts must be allege and proved to set the judicial machinery in action...These facts did not go to the subject matter, or personal jurisdiction "but to a preliminary fact necessary to be proven to authorize the count to act" Noble v Union River Logging R.R. 13 S.C.T. 271, 274 (1893).

In Conclusion for this section, Defendant motion and memorandum of Law rely on the language of the rule and statutes and the cases interpreting them, and will addressed and support each point mentioned in his motion and in opposing party Memorandum of Law.

ARGUMENT

A. Defendant 60 (b) (4) motions is timely.

Plaintiffs maintain in their opposing memorandum of law that defendant motion is untimely, under the Federal Rules for civil Procedures 60(b), because it was not filed "within a reasonable time". Indeed the rule explicitly states that a motion made under sections other than 60(b) (1), (2) and (3) must be filed "within a reasonable time". However, if a judgment is void, it is a legal nullity from the outset and any 60(b) (4) motion for relief is therefore filed within a reasonable time. 11 C. Wright & A. Miller, Supra Note 7 at S2866.

Default judgment was entered against defendant on August 16th, 2006. And defendant motion was filed in October 11th 2007, nearly fourteen(14) months after entry of judgment and 2 months after the one (1) year required time for sub vision 1,2,3 of the 60 (b) (4) rule. It is well establish that, the reasonable time limitation does not apply to a motion under clause (4) attacking a judgment as void. Practical Concept Inc v Republic of Bolivia 613 F. Supp. 863 (DCDC1985). "A void judgment, (can not) acquire validity because of laches on the part of him who applies for relief from it". Austin v Smith 312 F2D 337, 343 (D.C.Cire.1962) as such defendant motion is timely and was filed according to the prescription of the rule 60(b) (4). In Sea land Service Inc v Ceramica Europa II Inc. 160 F.3d 849 (1st circuit 1998), defendant in this case brought the 60(b)(4) motion nearly 1 year after entry of default judgment.

- 5 Years in Shenouda v Mehana 203 F.R.D 168.
- 4 Years in CF Klapprott v United States 69 S. Ct 384
- And almost 20 Years in Rohm & Haas Co. v. Aries 103 F.R.D 541 (S.D.N.Y 1984)

In light of all those cases, the language of the rule is clear, and argument that defendant motion was not brought within "reasonable time" limit mentioned in federal rules of civil procedure is without merit. "Lack of Jurisdiction is the principal basis for an attack on a default judgment under rule 60(b) (4). C. Wright A miller & M.Kane , 10 Federal Pratical & Procedure S 2695.

B. Defendant Motion is with Merit

"Extreme sanction of default judgment should be employed only as a last resort." Fed rules civ. Proc. Rule 60(b) 28 U.S.C.A. Plaintiff is correct in asserting the 3 provisions of rule 60(b), pertaining to the court decision to vacate a default judgment. The traditional rule is that a judgment rendered in excess of the court's jurisdiction is void and a legal nullity. Restatement of judgments SS5-7-(1942).

Defendant Constant was served with summons and complaint on January 22nd 2005, on behalf of Plaintiffs. Defendant did retain a lawyer to appear in the case, and even paid him a deposit of Ten thousand Dollars (10.000.00). Defendant repeatedly tried to contact Attorney

John F. Tiffany of Bloomfield, NJ, for follow up in the complain, without result. On July 5th 2005, the defendant was incarcerated in Suffolk County for a case unrelated to this matter, and was incapable to appear in the subsequent evidentiary hearing in August, without an order to produce. Plaintiffs were aware of the exact location of the defendant, as he was being served with a various number of legal documents.

However after intensive legal research in the Law library of the various correctional facilities, he attended, while still fighting legally his other cases, the defendant was able to find and file the appropriate motion to ask the Honorable court to set aside the default judgment entered against him on August 16th 2007. After receiving the summons, the defendant was under the impression that he was the victim of a judicial error for the following reason:

- Defendant was never part of an organization named Revolutionary Front for the Advancement and Progress of Haiti.
- The Defendant was never a commander of any organizations
- The defendant was also under the impression that he was sued in Re Belance, because when suing an Unincorporated Association, you sue all their members. The complaints in Belance were dismissed; defendant could not be sued for the same cause of action twice.

For all those reasons, the defendant contends:

1- <u>Default judgment was not willful</u>

Defendant asserts that its failure to file an answer was not willful, because it was based on the good faith belief that court did not have jurisdiction over him, Due to the wrong name of the organization in the complain and the Eastern District court to dismiss decision to dismiss Belance. Attorney for two (2) of the plaintiffs in the instant case was also plaintiff counsel in Belance.

2- <u>Existence of a Meritorious Defense</u>

"....When a party attack a judgment for voidances, there is no requirement that he shows the existence of a meritorious defense, as he must under other clauses of the rule 60(b) (4). Wright & Miller, S2862 at 197.

3- <u>Prejudice to the Plaintiffs</u>

In the memorandum of law presented by the plaintiffs, it does not appear, nor do plaintiffs contend, that any prejudice would result if entry of judgment were merely set aside. Plaintiffs mention of the courage to testify in court and all their emotional torments due to the proceedings can not be describe as prejudicial facts. Furthermore Defendant was not obligated to file an answer to the complaint. To do so would enjoin him in a litigation which the Federal District Court has no jurisdiction to entertain, also "where a defendant appears in the original suite and raises the jurisdictional issue but has it determined against him, he is barred from re-litigating the issue in subsequent voidances attack.

Durgee v Duke 84 5ct 242(1963)

In Practical Concept Inc v Republic of Bolivia '....The court notes that if finds nothing at all unreasonable in (Bolivia) strategy of waiting until after execution of the judgment was under way to raise its jurisdictional point" 613 F. Supp. 863(D.C.DC 1985. See also Insurance Corporation of Ireland v Company des beauxiles des Guinee. 102s.ct 2099 (1982). "A defendant is always free to ignore the judicial proceeding, risk a default judgment and then challenge that judgment on jurisdictional ground in a collateral proceeding.

Defendant moves to set aside default judgment for lack of subject matter jurisdiction and personal jurisdiction.

C. District Court for the Southern District of New York- Lack All Jurisdiction Of The Claim Presented

The court erred in maintaining the action when proper jurisdiction was never had by said court. Pursuant to 28 US C S1350, Two objectives must be met in order for the court to properly declare jurisdiction of action brought pursuant thereto. Said two (2) objectives being;

1-Exhaustion of available remedies where Alleged tort to have taken place.

2-The action being brought in a timely manner (VIZ) within 2years.

Plaintiffs filed their complaint under 28 U.S. C. S1350 Alien Tort Statute and the Torture Victim Protection Act of 1991, under both ATS and TVPA 3 requirement are necessary for the establishment of a civil action:

1-An Individual, who under actual or apparent authority or Color of law, of any foreign nation commits a tort.

2 Exhaustion of Remedies - A court shall decline to hear a claim under this section if the claimant has not exhausted "adequate and available" remedies in the place in which the conduct giving rise to the claim occurred.

3 Statute of Limitations- No action shall be maintained under this section unless it is commenced within 10years after cause of action arose.

Plaintiffs Claims are barred By the Statute of Limitations:

The law of equitable tolling is not applicable in the case a bar, the focus of the statues of limitations arguments in this case must be discussed with careful consideration of what being alleged. Plaintiffs maintain that their claims were timely filed, because due to certain circumstances, equitable tolling principle should be applied. The focus of their arguments resides mostly of the absence of defendant Constant from the United States. Indeed, defendant concedes, as stated in plaintiff's memorandum of law that he entered the US Jurisdiction on December 24th 1994. The cases led by plaintiffs to support their arguments can not be applied in the context of the instant matter for the forgoing reasons:

In Re Hilao v Estates of Marcos, plaintiffs could not assert action during Marcos presidency, and every claim against Marcos had to be tolled until he left office, and not in apposition to control the judiciary system, having lost also his immunity.

In Re Jean v Dorelien, Defendant also had certain immunity as an active member of the Haitian Armed Forces (Dorelien was a high ranking officer).

"The Statute of limitations for plaintiffs claims must be tolled to begin when defendant were stripped of their immunity" See generally Ellis v General motors acceptance Corp. 160 F3d 703 (11th CIR 1998)

In Re Cabello v Fernandez-Larios, Defendant was unreachable due to his participation in the witness protection program.

Plaintiffs presented three (3) claims, based on conducts which arose on three (3) different dates;

Jane Doe I on April 1994
Jane Doe II on July 1994
Jane Doe III on October 1993 (Similar to Case in Belance v Constant) Exhibits 1.

By calculating the ten years time limitations, the court would find three (3) different filing periods as required by statute on section 2(c). Because Torts committed involved three separate victims, and not a continuous tort committed upon one (1) plaintiff at three (3) different circumstances:
For Jane Doe I the deadline date for filing her claim would be April 2004.
For Jane Doe II the deadline date for filling her claim would be July 2004.
For Jane Doe III the deadline date for filling her claim would be October 1993.

However the rule of Limitations of Action, are cleared on the subject as a general rule "the tolling Provision for temporary absence from (State) is not applicable to non resident..."

Guardia v Kontos 961 S.W. 2d 580 (Tex App San Antonio 1997). "Under Federal Law equitable Tolling is available where:

1-defendant wrongful conduct prevented plaintiffs from asserting the claim.
2- Extraordinary circumstances outside plaintiffs control made it impossible to timely assert the claim.

Fortis v Suarez –Masson 672 F.Supp at 1549

Also the law states that equitable tolling exist "where the defendant has wrongfully deceived or misled the plaintiffs in order the conceal the existence of the cause of action. The misconduct attributed to defendant must be such that it prevents the plaintiffs from filing his or her claim on time, or defendant concealed his whereabouts form plaintiffs.

In the instant case, none of those provisions are applicable to defendant Constant. Furthermore, in order to warrant application of equitable tolling, plaintiffs must do more than proffer conclusion

assertions and theoretical possibilities. Defendant Constant was amenable and reachable from the first cause of action (October 1993 to July 2004).

“Where there is a procedure to effect service process on an absent person, the statute of limitation generally is not tolled by defendant absence” C.J.S federal Civil Procedure S 132. See 466 NYS 2d 297 NY State Higher Education Services Corp v Zamore.

Also the Statue of limitation is not tolled because of a defendant's absence or non residence if plaintiffs could commence a personal action against defendant by service of process on defendant agent...." Process service can also be done by certified mail. See us research system Corp v Ipsos Publicity 276 F 3d 914(7th Cir 2002).

Defendant Constant maintain an agent in New York and in Belance, FRAPH was served with a summons thru it's agent in New York. Defendant address was internationally known due to the amount of press conference and interviews he had given at his home, not to mention that parcel services exist in Haiti, thru companies such as DHL and FedEx.

Section 2(b) of the A.T.S and T.V.P.A, uses the word “commenced” to establish the limits of the prescribe time “the court should not overlook the fact that a litigation “commence” by service of process of the adverse party”. Irwin v Dept of veteran's affairs III S. Ct 453 (1990) Opinion of Justice Slevens at 460. And also Textile Banking Co, Inc v Rentschler 657 F 3d 844 (1981).

“.... In the same manner that service of a summons “commences” an ordinary civil action” ID at 9 making The Commencement of Plaintiffs action January 22nd 2005.

In conclusion, in the matter of Doe v Constant, the plaintiffs failed to make a “Primafacie” showing that the action was timely, as within the prescribe 10 years limit. In Fact plaintiff made no such averment in the original pleading. Plaintiff's failures to file their claim during the 10years period can not be blamed on defendant. Plaintiffs claims are time barred and court lack s subject matter jurisdiction. The default judgment is void A-D should be set aside.

D. **Plaintiffs failed to Exhaust Adequate and Available Remedies.**

Plaintiff's claims are based upon allegation of conduct that occurred within the geographical border of the nation of Haiti, and this would require plaintiffs to exhaust “adequate and available” remedies within the nation of Haiti.

Plaintiffs in their memorandum of law contend that Haiti lacks adequate remedies and pursuit of those remedies would be futile “ memo of I. ID2” the declaration of Dr Robert Maguire is in conflict with declaration made of Mario Joseph, who is an attorney living in Haiti, with first hand information in regards to the Haitian legal system.

Section 2(b) of the Torture Victim Protection Act 28 S 1350 clearly states “ a court should decline to hear a claim under this section if the claimant has not exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred . This provision is not to be interpreted.

Defendant has submitted, in the original 60(b) (4) motion a declaration of an attorney in Haiti, who confirms the existence of those remedies in Haiti. The question here is not why those remedies were not exhausted, but to establish their existence. The declaration of Mario Joseph, of the Bureau des Avocat Internationaux, or B.A.I was used as support in Plaintiffs memorandum of points and authorities on damages. Docket number 59. Plaintiff can not, for reasons of opposing defendant motion, devaluate Mr. Joseph Declaration, when such declaration was used to show the court the existence of those" available and adequate" remedies of the Haitian Judicial System.

The Statues merely provides that there be "Adequate and Available remedies" abroad. U. S.C. S 1350. "A foreign remedy is adequate even if not Identical to remedies available in the United State. Corric v. Caterpillar Inc 403 F Supp 2d 1019 (W.D. Wash 2005).

Court usually finds a foreign remedy adequate unless it "is not remedy at all "Piper Aircraft co v. Reyno 102 S.ct 252 (1981)

Haitian Tort Law provides adequate remedies for plaintiffs injures as a result of Torturous conduct. (Declaration of Attorney Mario Joseph, docket #59, and exhibit A 60(b) (4) motion "Haitian law allows Tort Victim to sue for civil damage. In Particular, Torture, Rape, Assault and False Imprisonment are all crime under Haitian Law...." See Constitution Of Haiti (1987) Act 27; Haitian Penal Code Art 85, et Seq 289 and 259; Haitian Code of Criminal , Art 1 and seq....ID at 3.

Mr. Mario Joseph, state the he "serve as the attorney of records for the Victims and the Chief trial Lawyer....."ID at 2.

Plaintiff's arguments are based on the following cases law:
In Re Hilao v. Estate Marcos: where defendant, as president of the country had complete control of the Judicial System.
In Re Xunlax v Gramjo: where defendant was the former minister of Defense and as such enjoys complete immunity.
In Re Cabiri v Assassic-Gyimah , the suit was against a Ghana security officer.

None of those apply to defendant Constant.

Furthermore, In Re Jean v Dorelien 431 F 3d 776 (11th circ 2005). "....Once a defendant makes a showing of remedies abroad, which have not been exhausted, the burden shifts to the plaintiffs to rebut...." Plaintiffs in the instant matter failed to do so in their memorandum of law, because plaintiffs can not in all fairness reject attorney Joseph statement after it served its purpose.

In the same cited cases, Plaintiffs did obtain a legally bonding judgment in Haiti against defendant. See Jean v Dorelien Id. At 8. The Haitian Armed Forces was in fact dismantling when the US Troop landed in Haiti, on September 20th, and the legitimate Government return to power on October 15th 1994. Up to this date the UN forces have not left Haiti and were roaming the whole territory. Suit was filed against Defendant organization, in the Eastern District Court of New York on June 1st 1994, and no report of Threat or other form of intimidation on Plaintiffs

exist against Defendant Constant, Which prove further the ability for plaintiffs to seek remedy in Haiti or elsewhere.

The allegation of corruption can not be taking in account by the court, because, "(it) is not the business of our court to assume the responsibility for supervising the integrity of the judicial system of another sovereign nation". Chesley v Union Carbide Corp 927 F 2d 60, 66 (2d cir. 1991) (quoting authority omitted). Moreover, in Banco Mercantile, SA v Hernandez Arencibia 927 F Supp 565 (D Puerto Rico 1996). Proof of Adequate and available remedies was given, by the affidavit of an attorney of the Dominican Republic, despite allegation of Plaintiffs of corruption in the judicial system.

The court adds that "if the court held the (Dominican Republic) was an inadequate forum due to the alleged corruption that plagues its judicial system, the gates to the federal courts of the United States would be wide open to any riad of (Dominican Republic) dispute having no connection with the US except for the fact that one party is domiciled in a jurisdiction within the US ID at 3.

Corruption in the Judicial System is everywhere, and can be manifest under various forms, threats, intimidation etc...The alternative forum is too corrupt to be adequate "argument does not enjoy particularly impressive track record. Number of Court has rejected position. See Blanco v Blanco Industrial de Venezuela S.A.997 2d 974 (2 circ 1993) (Refusing despite charges of corruption, to find Venezuelan courts an inadequate alternative forum) See Also Mercier v Sheraton Int'l Inc 981 F 2d 1345 (1st Cir 1992) (finding Turkey to be an adequate Alternative Forum despite Plaintiffs claim that Turkish courts had a profound Bias against American and Foreign women).For all those reasons the allegations of Plaintiffs do stand to prove the issue of remedies.

In Conclusion for this section, Defendant can positively states that an alternative forum exists in Haiti. Plaintiffs in their memorandum of Law failed to make a "Prima Facie" showing that available remedies had been exhausted, in fact Plaintiffs made no such averment in the original pleading.

Defendant moves to vacate the default judgment for lack of subject matter jurisdiction pursuant the Torture Victim Protection Act 28 U.S.C S 1350 (1991) Judgment was void in AB INITIO.

Conclusion

Defendant moves to vacate the August 16th, 2006, judgment for lack of subject matter jurisdiction and personal jurisdiction over defendant. Complaint and subsequent pleading form plaintiffs seems to fall within the following statement of the supreme court t "...has carved of a narrow exception to this rule (jurisdictional Challenge Attacks) where alleged claim under the constitution or federal statutes clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or such claim is wholly unsubstantial or frivolous. Bell v Hood.

-Plaintiffs claims are time barred by the ten (10) years statutes o f limitations.

-Plaintiff failed to show good cause for not exhausting the available and adequate remedies.

-Court never had jurisdiction over defendant.

-The defendant judgment of august 16th 2006, have caused defendant substantial prejudice, so that might be repairable for all those reasons, defendant respectfully urges the honorable court to set aside the default judgment as void, for lack of Subject and personal Jurisdiction.

/s/

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