

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO**

IN RE: BLD REALTY, INC. DEBTOR	CASE NO. 22-00802 (MCF) CHAPTER 11
BLD REALTY, INC. <i>Plaintiff</i> VS. PERFECT PRICE, INC.; PERFECTO RIVERA IZQUIERDO; LATIN INVESTMENT CORP.; RAMON CLAS VAZQUEZ; MICHAEL A. PABON RIVERA; PRODUCTOS LA PERFECTA, CORP.; JOHN DOE 1-5 <i>Defendants</i>	ADV. PROC. NO. 22-00034 (MCF) CLAIM FOR: DECLARATORY JUDGMENT; DETERMINATION OF PROPERTY OF THE ESTATE UNDER SECTION 541 OF THE BANKRUPTCY CODE; VIOLATION OF THE AUTOMATIC STAY AND SANCTIONS UNDER SECTIONS 362 AND 105 OF THE BANKRUPTCY CODE; AVOIDANCE OF TRANSFER UNDER SECTION 547 AND 548 OF THE BANKRUPTCY CODE AND TURNOVER OF PROPERTY OF THE ESTATE UNDER SECTION 542 AND 550 OF THE BANKRUPTCY CODE; AND DAMAGES FOR TORTIOUS INTERFERENCE; PIERCE OF CORPORATE VEILS

**MOTION FOR DISMISSAL UNDER RULE 12(b)(6)
OF THE FEDERAL RULES OF CIVIL PROCEDURE**

TO THE HONORABLE COURT:

NOW COME *Perfect Price, Inc.; Perfecto Rivera Izquierdo; Latin Investment Corp.; Ramón Clas Vázquez; Michael A. Pabón Rivera; and Productos La Perfecta, Corp.; through counsel, and most respectfully* **STATE and PRAY:**

I. Introduction

1. On May 25, 2022 BLD Realty, Inc. (BLD), filed instant Complaint against appearing parties. The Complaint proposes to argue in this Court what is left of Case No. VA2019cv00092 before the Court of First Recourse, Bayamón Part, against Perfect Price, Inc. and Perfecto Rivera Izquierdo, codefendants herein on BLD terms. A case which is still pending before the Court of First Recourse, and for which there is a Partial Judgment which has not become final.
2. Additionally, the Complaint proposes to avoid a regularly conducted judicial sale, which occurred pre-petition under various incorrect theories, while arguing that some of the codefendants violated the automatic stay which never existed.
3. To adorn its highly speculative claim BLD argues “based on information and belief”, that the act of joining resources, if true, to purchase mortgage notes, which are negotiable instruments, at a discount, constitute a tortuous or fraudulent activity which warrant the award of damages, further requesting the piercing of the corporate veil over who knows which entity without legal basis.
4. For the reasons expressed herein, the Complaint fails to state a plausible claim and should be dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

II. BLD admits the following relevant facts in its Complaint

1. Under caption “General Facts Related to All Causes of Action, I: History of the Foreclosure Case and Negotiations” BLD admits the following:
 - “30. Upon information and belief, Latin Investment, Perfect Price, Mr. Perfecto Rivera and La Perfecta, all share the same legal counsel, Wallace Vázquez Sanabria, Esq.¹

¹ It should be noted that Att. Wallace Vázquez Sanabria is an experienced bankruptcy practitioner. (Emphasis added)

31. *Once Latin Investment obtained the loans and/or the Judgment against the Debtor, it immediately moved to foreclose on the two properties and the public sale of the same.*
32. *Latin Investment used its Judgment credit to obtain the properties in the public sale represented by Wallace Vazquez Sanabria, Esq.*
33. *On March 18, 2022, Latin Investment move (sic) the state court for an Order approving the transfer of the two lots to itself. (Emphasis added)*
34. *On March 23, 2022, Latin Investment executed the deeds for the transfer of the two properties, before Notary Public Duncan R. Maldonado Ejarque. (Emphasis added)*
35. *On March 24, 2022, the Debtor filed its Bankruptcy Petition (Lead Case No. 1). (Emphasis added)*
36. *On March 25, 2022, the Debtor notified the Puerto Rico State Court of the filing of the Bankruptcy Petition.*
37. *On March 29 (sic), 2022, the Court stayed all proceedings due to the filing of the Bankruptcy Petition.*
38. *On March 29, 2022, after the Chapter 11 case was filed, the Puerto Rico Court of First Instance, Superior Court of Bayamón, without jurisdiction (sic), issued an Order approving the judicial sale of the properties to Latin Investment”.*

III. Reliable Documents which Support Admissions by BLD and Other Uncontroverted Relevant Facts

1. *Rule 201 of the Rules of Evidence provides as follows:*

“(a) **Scope.** *This rule governs judicial notice of an adjudicative fact only, not a legislative fact.*

(b) **Kinds of Facts That May Be Judicially Noticed.** *The court may judicially notice a fact that is not subject to reasonable dispute because it:*

- (1) *is generally known within the trial court’s territorial jurisdiction; or*
- (2) *can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.*

(c) **Taking Notice.** *The court:*

- (1) *may take judicial notice on its own; or*

(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) **Timing.** The court may take judicial notice at any stage of the proceeding.

(e) **Opportunity to Be Heard.** On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

(f) **Instructing the Jury.** In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the notice fact as conclusive". (Emphasis added)

2. We move the court to take judicial notice of various orders and events in cases DCD2010-0423 and VA2019cv00092 before the Court of First Recourse, Bayamón Part, of the content of Public Deed No. 3 of March 23, 2022 before Duncan Maldonado Ejarque, of the presentation of the Deed of Judicial Sale in the Property Registry, Section III, Bayamón, regarding property 996 and exerts of the schedules filed in instant bankruptcy case 22-00802.

3. In our view the orders and events can be readily determined from sources whose accuracy cannot reasonably be questioned.

4. To facilitate the process, we enclose Exhibits A to K, which provide:

- a. Exhibit A Order for Execution of Judgment against BLD property notified on February 4, 2022 in case DCD2010-0423
- b. Exhibit B Writ of Execution
- c. Exhibit C Notice of Judicial Sale of March 15, 2022
- d. Exhibit D Motion Informing Compliance with Rule 4.6 of the Rules of Civil Procedure of 2009, which reflects that BLD and their attorneys

Mr. Rodney W. Colón Ortiz and Mr. Aníbal J. Mendín Sánchez were notified via certified mail on February 26, 2022 of the pending judicial sale

- e. Exhibit E *Order notified on March 14, 2022 in case VA2019cv00092 granting Perfect Price, Inc. and Perfecto Rivera Izquierdo twenty (20) days to react to a certain Motion Requesting Order filed by BLD or until April 3, 2022*
- f. Exhibit F *Motion Requesting Approval of Judicial Sale in case DCD2010-0423 filed on March 16, 2022 which reflects that the Judicial Sales were held on March 15, 2022 and that the value for which the property was adjudicated corresponded to the market value as per excerpt of an appraisal provided and included*
- g. Exhibit G *Deed of Judicial Sale executed on March 23, 2022*
- h. Exhibit H *Judgment notified on March 28, 2022 in case VA2019cv00092 staying proceedings at the request of BLD*
- i. Exhibit I *Order of March 29, 2022 confirming Judicial Sale*
- j. Exhibit J *Title Search to reflect that the Judicial Sale was presented for recordation on March 24, 2022*
- k. Exhibit K *Exert from schedules prepared by Debtor BLD which reflects they list the value of the properties at issue at \$1,340,000.00*

IV. Standard for Evaluating Motions Under Rule 12(b)(6)

A. Standard for evaluating motions under Rule 12(b)(6)

1. Rules 12(b)(6) provides:

“How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

- (1)*
- (2)*
- (3)*
- (4)*
- (5)*

(6) failure to state a claim upon which relief can be granted”.

- ##### **2. Fed. R. Bankruptcy Proceeding 7012 makes Federal Rules of Civil Procedure 12(b)(6) applicable to Adversary proceedings. Federal Rules of**

Civil Procedure 8(a)(2) mandates complaints to contain a “short and plain statement of the claim showing that the pleader is entitled to relief”. Although, detailed factual allegations are not required, the Rule does call for sufficient factual matter. Therefore, to survive a motion to dismiss under this Rule, a complaint must contain sufficient factual matter, accepted as true to “state a claim to relief that is plausible on its face”. Bell Atlantic Corp. v. Twombly, 550 US 544, 570 (2007). A claim has plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Id. at 556. This new “plausibility” standard replaced the traditional standard, under which the movant was simply required to show “beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief”. Milton I. Shadur updates and Mary P. Squiers, 2-12 Moore’s Federal Practice-Civil §2.34[1][a]. The current standard requires sufficient facts that “raise the right to relief above the speculative level”. Twombly, 550 U.S. at 555. Also see Wright v. Miller, Federal Practice and Procedure: Civil 3d §1357. The plausibility standard is not akin to a “probability requirement”, but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are “merely consistent with” a defendant’s liability, it “stops short of the line between possibility and plausibility of entitlement to relief”. Twombly, 550 U.S. at 557. The Twombly standard was further developed in Ashcroft v. Iqbal, 556 U.S. 622 (2009), advising lower courts that “determining whether a complaint states a plausible claim for relief will... be a context-specified task that requires the reviewing court to

draw on its judicial experience and common sense”. 556 U.S. at 679. “In keeping with these principles, a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by actual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief”. Id. at 679. In sum, allegations in a complaint cannot be speculative and must cross “the line between the conclusory and the factual”. Peñalbert Rosa v. Fortuño-Burset, 631 F. 3d 592, 595 (First Circuit, 2011). “An adequate complaint must provide fair notice to the defendants and state a facially plausible legal claim”. Ocasio-Hernández v. Fortuño Burset, 640 F 3d 1, 11 (First Circuit, 2011).

3. *In deciding whether or not to dismiss under Federal Rules of Civil Procedure 12(b)(6), the court may consider the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the pleadings and matters of which the judge may take judicial notice. See Federal Rules of Civil Procedure 10(c) (documents attached to pleadings are part of pleadings); Young v. Lepone, 305 F 3d 1, 11 (First Circuit, 2002) (district court was entitled to consider letters that were not attached to complaint when complaint contained extensive excerpts from letter and referenced to them; when factual allegations of complaint revolved around document whose authenticity is unchallenged, that document effectively merges into*

the pleadings); Lovelance v. Software Spectrum, Inc., 78 F 3d 1015, 1017-1018 (5th Cir. 1996) (courts must limit inquiry to facts stated in complaint and documents either attached to or incorporated in complaint; however, courts may also consider matters of which they may take judicial notice). When considering a motion under Federal Rules of Civil Procedure 12(b)(6), a “court must view the facts contained in the pleadings in the light most favorable to the nonmovant and draw all reasonable inferences therefrom...”. R.G. Fin. Corp. v. Vergara Nuñez, 446 F 3d 178, 182 (First Circuit, 2006).

4. *A review of the Adversary reveals it is replete with calls for making inferences, based on information, belief, and baseless conclusions, which have insufficient factual data to state a claim, or the issues have already been adjudicated.*
5. *The Adversary does not have facial plausibility to allow the Court to draw the reasonable inference that the defendants are liable.*
6. *For these reasons, the Adversary fails to state a cognizable claim and must be dismissed under Rule 12(b)(6).*

V. Discussion

A. Second Cause of Action: Declaratory Judgment that the two lots of land constitute Property of the Estate Under Section 541

1. *The merits of instant Complaint are dependent on the correctness of the allegations for the Second Cause of Action.*
2. *BLD claims that as of the filing of the Bankruptcy Petition, March 24, 2022, BLD had an interest in the two lots at issued because the sale of the properties had not been approved by the Puerto Rico Court of First Instance. See paragraph 69. BLD is incorrect.*

3. On January 24, 2020 in case 18-07127 *In re Diana I. Lagares Santana*, Judge Lamoutte had the opportunity of addressing the same issue being raised by BLD today.
4. The Court expressed itself in the following terms:

*“The automatic stay in 11 U.S.C. §362(a) is one of the basic protections under the Bankruptcy Code and becomes operative by the filing of the bankruptcy petition. Soares v. Brockton Credit Union (In re Soares), 107 F. 3d 969, 971 (1st Cir. 1997). The automatic stay is extremely broad in scope and, ‘aside from the limited exceptions of subsection (b), applies to almost any type of formal or informal action taken against the debtor or the property of the estate’. Alan N. Resnick & Henry J. Sommer, 3 Collier on Bankruptcy ¶ 362.03 (16th ed. 2018). Furthermore, the automatic stay also protects creditors since it prevents the ‘disbursement of a debtor’s assets by individual creditors levying on the property. This promotes the bankruptcy goal of equality of distribution’. Id. The automatic stay provides debtors with one of the cornerstone protections under bankruptcy law, giving debtors a ‘breathing room’ from the pressures of their creditors. See *In re Soares*, 107 F. 3d at 975. Given its utmost importance in the bankruptcy system, courts ‘must display a certain rigor in reacting to violations of the automatic stay’. *In re Soares*, 107 F. 3d at 975-976.*

However, ‘[u]nless it is extended by the court [] as a general rule the stay only protects, by its terms, actions against the debtor, the debtor’s property, or property of the estate. It does not, for example, protect nonparties, such as, for example, guarantors of debtor’s debt (except in Chapters 12 and 13 where there is a codebtor stay); officers, directors, or shareholders of a corporate debtor, partners of a partnership that is in bankruptcy (or the reverse); or a nonfiling spouse of a debtor’. Hon. Joan N. Feeney, Hon. Michael G. Williamson and Michael J. Stepan, Esq., Bankruptcy Law Manual, §7:4 Vol. I (5th ed. 2017), pgs. 1531-1532.

*Property of the estate is broadly constructed pursuant to 11 U.S.C. §541. ‘However, nothing in this section 541 can revest debtor with property loss prepetition, such as through foreclosure and eviction’. 5 Lawrence P. King, Collier On Bankruptcy P. 541.04 (15th Edition Revised 2003). When considering ‘the debtor’s interests in real property it is necessary to look outside of bankruptcy law to determine the nature and extent of such interests’. Collier P 541.05. See also *Tidewater Finance Company v. Moffett (In re Moffett)*, 365 F. 3d 518 (4th Cir. 2004); *Boyd v. United States (In re Boyd)*, 11 F. 3d 59 (5th Cir. 1994). Section 541(d) provides whether or not a property is property of the estate when the debtor only has bare legal title on the property and*

lacks any equitable interest. To determine whether debtor's foreclosed property is property of the estate, or the nature of debtor's interest in said property, if any, the court must examine the applicable statutory provisions of Puerto Rico law. See *In Re Martínez Ortiz*, 306 B.R. 727 (Bankr. D.P.R. 2004).

The Real Property Registry Act of the Commonwealth of Puerto Rico ("*Ley del Registro de la Propiedad Inmobiliaria del Estado Libre Asociado de Puerto Rico*")², Law 210-2015, in Article 107) 30 L.P.R.A. §6124) describes the procedures following the judicial auction and sale of real property and delimits a procedure of confirmation of a judicial auction or sale by the state court.³ Article 107, in its pertinent part, provides:

'If the court concludes that the requirements established in this subtitle are not complied with, completely or partially, it will describe the reasons of which the determination is based and will order that the mistakes or faults be corrected and that the incorrect actions found in the proceedings be duly performed. The court may order the debtor or the third holder of halt payment of any amounts required to pay in excess of the amounts owed or not covered by the mortgage lien. Once the mistakes or faults are corrected or rectified as ordered by the court, the court will confirm the adjudgment or sale. The secured creditor may commence a new judicial sale proceeding in accordance with this title if the sale is not confirmed due to the mistake in the proceeding or any other reason determined by the court.

If the court ultimately does not confirm the adjudgment or sale, the same will remain without effect or juridical value, returning the amount paid to the buyer'.⁴

² Our translation. No official translation in the English language of this Act is available as of the entry of this Opinion and Order.

³ This procedure was added to the law enacted on 2015 as a new procedure part of the execution of judicial mortgage sales. The confirmation of the judicial sale was not part of the procedures required before the enactment of the Real Property Act of the Commonwealth of Puerto Rico of 2015.

⁴ Article 107 in the Spanish language provides in its entirety:

"Celebrada la subasta, el alguacil devolverá a la Secretaría del Tribunal el mandamiento y el acta junto con el edicto y demás documentos relativos a la subasta, incluyendo cualquier objeción al procedimiento hecho durante el mismo. El secretario pasará inmediatamente al tribunal todo el expediente del procedimiento y éste dentro de un término que no excederá de diez (10) días lo examinará cuidadosamente para cerciorarse de que en todos los trámites del procedimiento se cumplieron debidamente los requisitos señalados en este Subtítulo, y así lo determinará. A petición de parte, el tribunal dictará una orden confirmando la adjudicación o venta de los bienes hipotecados, sin la cual no será inscribible en el Registro de la Propiedad la adjudicación o venta.

No obstante lo anterior, si se debe a la demora del tribunal en emitir la orden confirmando la adjudicación o venta de los bienes hipotecados, la ausencia de dicha orden no podrá ser notificada como defecto que impida la inscripción de la adjudicación o venta judicial. En la medida en que la

Moreover, Article 112,⁵ which addresses the execution of the judicial sale deed, states the following:

'When the estate or right is sold or adjudged and the corresponding price is consigned, on the same or posterior date, the marshal who performed the auction will execute the corresponding public transfer deed in representation of the owner or holder of the mortgaged assets through a notary selected by the buyer, who should pay for the fees of the deed. The order which confirms the adjudgment or sale of the mortgaged assets established in Article 107 of the present law will not be a previous requirement to the execution of the public transfer deed by the marshal and the buyer, although it will be a requirement for its inscription. The attorney who appeared in the legal process in representation of the Defendant or the buyer, or who appeared as an authorized official on the public auction process will be impeded to authorize the public deed in the capacity of a notary. In the deed, the notary will give faith of having cancelled or rendered useless the promissory note object of the judicial adjudgment. The marshal will put the new owner in possession, if so requested in a term of twenty (20) days from the sale or adjudgment. At the lapse of this twenty (20) days the court may order, without the necessity of any ulterior proceeding, that the eviction of the occupant or occupants of the estate be completed, or anybody that, by tolerance of the debtor, occupies the property'.⁶

ausencia de dicha orden sea el único impedimento para proceder a la inscripción de la adjudicación o venta judicial, el término del asiento de presentación correspondiente continuará vigente hasta el día en que se presente en el Registro de la Propiedad una copia de dicha orden. En la alternativa, en caso de que el Registrador notifique como defecto el que el tribunal haya emitido una orden anulando la adjudicación o venta de los bienes hipotecados, la vigencia de la fecha de presentación se registrará conforme la sec. 6390 de este título.

Si el tribunal concluye que no se han cumplido, en todo o en parte, los requisitos dispuestos en este subcapítulo, expondrá las razones en que se funda, y ordenará se corrijan los errores, faltas o defectos que haya observado, y que se practiquen debidamente las diligencias o actuaciones incorrectas que surjan del expediente. Podrá ordenar además al deudor o tercer poseedor que no pague cualquier cuantía que se le haya requerido pagar en exceso de las debidas o que no esté cubierta por la garantía hipotecaria. Una vez corregidos o subsanados esos errores, faltas o defectos en la forma ordenada, el tribunal confirmará la adjudicación o venta. El acreedor hipotecario podrá tramitar un nuevo procedimiento de ejecución con arreglo a lo dispuesto en este subcapítulo cuando la venta no sea confirmada por error en el procedimiento o cualquiera otra razón determinada por el Tribunal.

Si el tribunal finalmente no confirma la adjudicación o venta, quedará la misma sin efecto ni valor jurídico alguno, devolviéndose el precio pagado por el comprador'.

⁵ An amendment to the Law was made on August 5, 2016, to ensure that the new procedures to the judicial mortgage sales remained expedient and simple. The amendment specifically addresses an inconsistency between Articles 107 and 112 in relation to the court confirmation requirement to adjudgment of the judicial sale after the auction is completed.

⁶ Article 112 in the Spanish language provides in its entirety:

"Vendida o adjudicada la finca o derecho hipotecado y consignado el precio correspondiente, en esa misma fecha o fecha posterior, el alguacil que celebró la subasta procederá a otorgar la correspondiente escritura pública de traspaso en representación del dueño o titular de los bienes hipotecados, ante el

The court evaluates the interrelation of both articles and finds that the state court confirmation requirement of Article 107 does not intend to halt the sale or transfer of the property, as clarified through Article 112. Moreover, Rule 51.7 of the Rules of Civil Procedure of Puerto Rico, 32 L.P.R.A. Ap. V, R. 51.7, states that the execution of the public deed by the marshal and the buyer transfer the dominium of the real property.⁷ This court has previously determined that in a mortgage foreclosure sale, title of the property is transferred to the purchaser when the deed of judicial sale is executed. See *In Re Hernández*, 244 B.R. 549 (Bankr. D.P.R. 2000), *In Re Martínez Ortiz*, 306 B.R. 727 (Bankr. P.R. 2004). See also *Rodríguez v. Naihomy* (*In Re Rodríguez*), 334 B.R. 754 (1st Cir. B.A.P. 2005) and dissenting opinion at *James Patrick Smyth Delgado v. Oriental Bank & Trust*, 170 D.P.R. 73 (2007).

Our juridical system requires, for the conveyance of ownership over the thing sold, not only the agreement of wills over the thing and its price -perfecting of the contract, §1339 of the Civil Code- but, also, the tradition or delivery of the thing. Thus, §1931, establishes that: 'Ownership and other property rights are acquired and transmitted by... in consequence of certain contracts, by tradition. *Serra v. Rivero*, 99 D.P.R. 60 (1970). Section 1351 of the Civil Code states that [w]hen the sale should made by means of a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if in said instrument the contrary does not appear or may be clearly inferred'.

The requirement included in Article 107 for the judicial sale to be confirmed by the state court was intended to provide the Property Registrar a sufficient warranty that the proceedings were performed accurately, as the requirement of "complementary documents" to

notario que elija el adjudicatario o comprador, quien deberá abonar el importe de tal escritura. La orden que confirma la adjudicación o venta de los bienes hipotecados dispuesta en el Artículo 107 de la presente ley, no será requisito previo para la otorgación de la escritura pública de traspaso por el alguacil de los bienes hipotecarios al adjudicatario o comprador, aunque sí para que pueda quedar inscrita. El abogado que haya comparecido en el proceso legal en representación de la parte demandante, del adjudicatario o comprador, o haya comparecido como oficial autorizado de estos últimos en el proceso de pública subasta, estará impedido de autorizar dicho instrumento público en su capacidad de notario. En dicha escritura el notario dará fe de haber inutilizado y cancelado el pagaré garantizado con la hipoteca objeto de ejecución. El alguacil pondrá en posesión judicial al nuevo dueño, si así se lo solicita dentro del término de veinte (20) días a partir de la venta o adjudicación. Si transcurren los referidos veinte (20) días, el tribunal podrá ordenar, sin necesidad de ulterior procedimiento, que se lleve a efecto el desalojo o lanzamiento del ocupante u ocupantes de la finca o de todos los que por orden o tolerancia del deudor la ocupen".

⁷ Rule 51.7 of the Rules of Civil Procedure of Puerto Rico, in the Spanish language, provides in its entirety:

"En caso de venta de propiedad inmueble, el oficial o encargado o la oficina encargada de la venta otorgará una escritura pública a favor del comprador o compradora ante el notario o la notaria que éste último o ésta última seleccione, abonando este el importe de tal escritura. Dicho otorgamiento constituye la transferencia real del dominio del inmueble de que se trate".

record the judicial sale was eliminated from the law. See Explanatory Memorandum of Law 210.⁸

Additionally, Article 107 states that when the only document missing in order for the Property Registrar to record the judicial sale deed is in the order confirming the judicial sale, the filing entry (“asiento de presentación”) will remain valid until the order confirming the sale is presented to the Registrar. This signifies that the judicial sale and transfer deed is not prohibited and gets access to the Registry even when the confirmation of the sale by the court is still missing and, although it cannot be recorded, it retains its position in the presentation order in the Property Registry.

The court further notes that Article 107 allows the modification or amendment of mistakes of the judicial sale procedures, as ordered by the court. Although a state court order denying the confirmation of the judicial sale was initially entered, the parties can amend or correct actions or omissions to acquire judicial confirmation of the sale. The Article makes clear that some matters may be corrected after the judicial sale procedures have ended and before confirmation, although others may require the annulment of the judicial sale. The Debtor argues that, in the present case, the state court denied the confirmation of the judicial sale, however, the record is empty of any evidence of said denial and the corrective actions required by the state court. Furthermore, confirmation of the sale was granted by the state court on October 20, 2018. The court concludes that the initial denial of confirmation must have addressed the issues that were to be corrected or amended in order to grant the confirmation. The judicial transfer deed was executed prior to the filing of the petition and not having been annulled by the state court, the transfer of the property occurred pre-petition and the property is not property of the bankruptcy estate.”

5. *In instant case it is uncontroverted that a Judicial Sale was held on March 15, 2022, the Deed of Sale was executed on March 23, 2022, and the bankruptcy petition was filed on March 24, 2022.*

⁸ “Entre las medidas modernas adoptadas, es menester destacar la eliminación del procedimiento sumario de ejecución de hipotecas que está en desuso en esta jurisdicción desde hace varias décadas. A su vez, se simplifica el procedimiento ordinario de ejecución de hipotecas haciendo innecesario para el notario que autoriza la escritura de venta judicial que acompañe como complementarios los documentos contenidos en el expediente del Tribunal. Esta medida encarece el trámite y atrasa la inscripción de la venta judicial por no estar disponibles los documentos complementarios que hoy exige la ley. Cónsono con la necesidad de simplificar los procesos, se adopta la norma vigente en el Tribunal de Estados Unidos para el Distrito de Puerto Rico. Bastará que el Tribunal, a moción de parte, expida Orden de Confirmación de Venta en la que acredite que se cumplieron los procedimientos requeridos por ley, para que la escritura de venta judicial pueda inscribirse. Exposición de Motivos”.

6. *In instant case, based on the cited authorities, since the Deed of Sale was executed prior to the filing of the bankruptcy petition, the transfer of the property occurred pre-petition and lots 1 and 2 are not property of the bankruptcy estate and the estate does not have an interest in them.*
7. *The Complaint is predicated on the fact that the Judicial Sale was confirmed on March 29, 2022, post-petition, but as discussed above, under Puerto Rico Law the confirmation does not affect the transfer which occurred pre-petition.*
8. *Under the doctrine developed by the U.S. Supreme Court in Bell Atlantic Corp. v. Twombly, supra, and in Ashcroft v. Iqbal, supra, there is no way BLD can establish a plausible claim.*
9. *It should be added that BLD and their attorneys were notified of the judicial sale via certified mail on February 26, 2022. See Exhibit D.*
10. *If BLD's Management failed to promptly react it was at their own peril and now they suffer the consequences of their inaction.*
11. *Instant Complaint is but a belated effort to correct a pattern or inactions by BLD's Management which resulted in losing the properties which ultimately are of inconsequential value to the Estate. See Exhibit K.*
12. *For the mentioned reasons, at a minimum the Second Cause of Action must be denied.*

B. Third Cause of Action: Violation of the Automatic Stay

1. *This cause of action is predicated on the erroneous assertion that the Court of First Recourse's Order approving the Judicial Sale entered on March 28, 2022 is null and void.*

2. *This conclusion is not supported by Article 107 of Law 210-2015 (30 L.P.R.A. 6124) and Article 112, which on August 5, 2016 amended Article 107, to clarify that the requirement in Article 107 for the Judicial Sale to be confirmed was not intended to halt the sale or transfer of the property, as discussed by Hon. Judge Lamoutte in In re Diana I. Lagares Santana, supra.*
3. *Additionally, pleadings do not argue a necessary element to establish violation of the automatic stay, which is willfulness. 11 U.S.C. 362(k).*
4. *This cause of action is but a belated effort by BLD's Management to cover up their negligence which resulted in losing the principal assets of the corporation.*
5. *Again, under the doctrine developed by the U.S. Supreme Court in Bell Atlantic Corp. v. Twombly, supra, and in Ashcroft v. Iqbal, supra, there is no way BLD can establish a plausible claim for violation of the automatic stay.*
6. *For the mentioned reasons, at a minimum the Third Cause of Action must be denied.*

C. Fourth Cause of Action: Damages for Violation of the Automatic Stay (Against Latin Investment, Mr. Clas and Mr. Pabón)

1. *For the reasons expressed in the previous paragraphs, there has not been a violation of the automatic stay. Accordingly, damages cannot be taxed against the mentioned codefendants.*
2. *This cause of action is but a belated effort by BLD's Management to cover up their negligence which resulted in losing the principal assets of the corporation*
3. *Again, under the doctrine developed by the U.S. Supreme Court in Bell Atlantic Corp. v. Twombly, supra, and in Ashcroft v. Iqbal, supra, there is no way BLD can establish a plausible claim for violation of the automatic stay nor related damages.*

4. For the mentioned reasons, at a minimum the Fourth Cause of Action must be denied.

D. Fifth Cause of Action: Avoidance Under Section 547 (Against Latin Investment)

1. At paragraph 102 of the Complaint, BLD refers to Section 547 in the following terms:

“(b) Except as provided in subsections (c), (i), and (j) of this section, the trustee may, based on reasonable due diligence in the circumstances of the case and taking into account a party’s known and reasonably knowable affirmative defenses under subsection (c), avoid any transfer of an interest of the debtor in property—

- (1) to or for the benefit of a creditor;*
- (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;*
- (3) made while the debtor was insolvent;*
- (4) made—*
 - (A) on or within 90 days before the date of the filing of the petition; or*
 - (B) between ninety days and one year before the date of the filing of the petition; if such creditor at the time of such transfer was an insider; and*
- (5) that enables such creditor to receive more than such creditor would receive if—*
 - (A) the case were a case under chapter 7 of this title;*
 - (B) the transfer had not been made; and*
 - (C) such creditor received payment of such debt to the extent provided by the provisions of this title”. (Emphasis added)*

2. It is impossible for BLD to establish that Latin Investment, a secured creditor, received more than such creditor would have received if the case where a case under Chapter 7 of this title, in view of the fact that Latin Investment is a secured creditor and as admitted by debtor in the schedules, the property is of inconsequential value to the Estate because it is encumbered by secured credits which exceed the value of the collateral.

3. *This cause of action is but a belated effort by BLD's Management to cover up their negligence which resulted in losing the principal assets of the corporation*
4. *Again, under the doctrine developed by the U.S. Supreme Court in Bell Atlantic Corp. v. Twombly, supra, and in Ashcroft v. Iqbal, supra, there is no way BLD can establish a plausible claim under Section 547.*
5. *For the mentioned reasons, at a minimum the Fifth Cause of Action must be denied.*

E. Sixth Cause of Action: Avoidance Under Section 548 (Against Latin Investment)

1. *At paragraph 113, in support of their claim, BLD quotes from Section 548 in the following terms:*

a)

(1) The trustee may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation (including any obligation to or for the benefit of an insider under an employment contract) incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

...

(B)

(i) *received less than a reasonably equivalent value in exchange for such transfer or obligation; and*

(ii)

(I) *was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;*

(II) *was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;*

(III) *intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or*

(IV) *made such transfer to or for the benefit of an insider; or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business". (Emphasis added)*

2. *There is no way BLD can establish that they received less than a reasonably equivalent value in exchange for such transfer. The Court can refer to the Deed of Judicial Sale as Exhibit G. It appears that the properties were sold for \$1,350,000.00. As appears from excerpt from the schedules enclosed as Exhibit K, BLD lists the properties with a value of \$1,340,000.00.*
3. *With these undisputed facts, BLD does not have a plausible claim.*
4. *This cause of action is but a belated effort by BLD's Management to cover up their negligence which resulted in losing the principal assets of the corporation*
5. *Again, under the doctrine developed by the U.S. Supreme Court in Bell Atlantic Corp. v. Twombly, supra, and in Ashcroft v. Iqbal, supra, there is no way BLD can establish a plausible claim under Section 548.*
6. *For the mentioned reasons, at a minimum the Sixth Cause of Action must be denied.*

F. Seventh Cause of Action: Recovery Under Section 550 of the Bankruptcy Code (Against Latin Investment)

1. *As discussed above, BLD does not have a plausible claim under Sections 547 or 548.*

2. *This cause of action is but a belated effort by BLD's Management to cover up their negligence which resulted in losing the principal assets of the corporation*
3. *Again, under the doctrine developed by the U.S. Supreme Court in Bell Atlantic Corp. v. Twombly, supra, and in Ashcroft v. Iqbal, supra, there is no way BLD can establish a plausible claim to recover property.*
4. *For the mentioned reasons, at a minimum the Seventh Cause of Action must be denied.*

G. First Cause of Action: Declaratory Judgment that the Monies Owed by Perfect Price and Mr. Perfecto Rivera Constitute Property of Estate Under Section 541; and

Eight Cause of Action: Turnover of Property of the Estate Under Section 542 of the Bankruptcy Code (Against Perfect Price, Mr. Perfecto Rivera and Latin Investment)

1. *These causes of action give the impression that debtor is attempting to engage in the practice of forum shopping.*
2. *The causes of action are predicated on the assumption that BLD has a final and enforceable Judgment against Perfect Price and Mr. Perfecto Rivera. Such is not the case. We refer the Court to Exhibit E, an Order of March 14, 2022 in case VA2019cv00092, which grant codefendants 20 days to react to a certain Motion Requesting Order filed by BLD, or through April 3, 2022.*
3. *Thereafter, at the request of BLD Judgment was entered, enclosed as Exhibit H, which closes the case because the matter was stayed in view of the bankruptcy.*

4. *It is evident that BLD does not have a final, unappealable and enforceable Judgment, and the matter is not ripe for this Honorable Court to grant the remedies requested.*
5. *We also refer the Court to Partial Judgment, included as Exhibit 2 to instant Complaint. At page 16 the Court can note that the only thing that was ordered was the eviction from the property. Unfortunately, at this junction, BLD does not have standing to enforce such eviction.*
6. *Also, we refer this Court to page 8 of the Partial Judgment, which reflects that there is controversy in that case related to the defense of deceit (“dolo”), which will require an evidentiary hearing before BLD has a final Judgment and subject to the appeal rights of the affected party.*
7. *Under the circumstances, mandatory abstention under 28 U.S.C. 1334(c)(2) applies in instant case.*
8. *Section 1334(c)(2) provides as follows:*

“Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction”.
9. *It appears from the pleadings that causes of action First and Eighth refer to actions not arising under title 11 or arising in a case under title 11, while there is a case still pending, Case VA2019cv00092.*
10. *Under this circumstances, U.S. District Court does not have jurisdiction and should abstain from acting on such claims in this case, as an action was*

already commenced and is being timely adjudicated by the Court of First Recourse. Comity must be exercised.

11. In view of the fact that the matter is being considered by the Court of First Recourse, Bayamón Part, BLD does not have a plausible claim in instant matter with regards to causes of action First and Eighth.

H. Ninth Cause of Action: Damages for Tortious Interference and/or Collusion (Against All Defendants)

- 1. In summary, during 2006 and 2008 BLD obtained two (2) loans secured by the properties at issue in instant Complaint from Banco Bilbao Vizcaya-Argentaria Puerto Rico (BBVA) and disposed of the proceeds.*
- 2. Because BLD did not perform, a Complaint was filed in 2010, case DCD2010-0473, and Judgment was entered against debtor herein for over \$4,000,000.00.*
- 3. Since 2016 BLD and its Management representatives had ample opportunity of purchasing the mortgage notes and Judgment, as they admit in the Complaint at paragraph 18, among others. However, they never acted to obtain the notes, negotiable instruments.*
- 4. Instead, they opted to cross their arms and wait for a miracle. In the meantime, Latin Investment purchased the notes, which are negotiable instruments, and acted to foreclose the properties, all this with notice to BLD, its Management, and its legal representatives, who did nothing.*
- 5. It is evident that this cause of action is predicated and implies that purchasing a negotiable instrument is a criminal or tortious activity, while ignoring the obvious that BLD's Management was negligent. Additionally, it*

does not comply with Rule 9(b) of the Federal Rules of Civil Procedure. See 'I' below.

6. *There are many investors who appear before this Court regularly after purchasing trouble loans, and act to obtain either performance or foreclosure of the security interest. Are they all a lot of tortfeasors or criminals? It does not make sense.*
7. *This cause of action is but a belated effort by BLD's Management to cover up their negligence which resulted in losing the principal assets of the corporation*
8. *Again, under the doctrine developed by the U.S. Supreme Court in Bell Atlantic Corp. v. Twombly, supra, and in Ashcroft v. Iqbal, supra, there is no way BLD can establish a plausible claim for tortious interference with or collusion.*
9. *For the mentioned reasons, at a minimum the Ninth Cause of Action must be denied.*

I. Tenth Cause of Action: Piercing of Corporate Veil (Against All Defendants)

1. *This action is predicated as per paragraph 161 on the theory that defendants all acted in collusion with a sole purpose of illegally and fraudulently depriving the debtor from its two lots of land. (Emphasis added)*
2. *One problem is that the Complaint, as a whole, does not meet the particularity requirements of Federal Rules of Civil Procedure 9(b).*
3. *Rule 9(b) of the Federal Rules of Civil Procedure provides as follows:*

“(b) Fraud or Mistake; Conditions of Mind. In alleging fraud or mistake, a party must state with particularity the circumstances

constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally".

4. *In all averments of fraud (or illegality) including collusion, the circumstances constituting fraud shall be stated with particularity.*
5. *It is evident that all the allegations in the Complaint are based on information and belief devoid of particularity as to the circumstances, constituting fraud against all codefendants which warrant piercing of the corporate veil or granting damages.*
6. *This cause of action is but a belated effort by BLD's Management to cover up their negligence which resulted in losing the principal assets of the corporation*
7. *Again, under the doctrine developed by the U.S. Supreme Court in Bell Atlantic Corp. v. Twombly, supra, and in Ashcroft v. Iqbal, supra, there is no way BLD can establish a plausible claim for piercing the corporate veil.*
8. *For the mentioned reasons, at a minimum cause of action No. 10, must be denied.*

J. All Causes of Action

1. *A review of the Complaint reveals that unquestionably BLD's Management or their representatives were negligent.*
2. *They had knowledge of the Judicial Sale since February 26, 2022 or shortly thereafter.*
3. *If instant bankruptcy had been filed on or before March 14, 2022, BLD would still have title to the two lots. No litigation needed.*
4. *Unfortunately for BLD, they procrastinated.*

5. *If instant bankruptcy had been filed from March 15 to March 22, BLD would have had a one cause of action adversary against one defendant, Latin Investment, with a high possibility of success.*
6. *Again, they procrastinated and in the process blew their opportunities to recover the assets.*
7. *In our opinion,⁹ Debtor and the Estate should not be patronizing BLD's Management negligence filing a Complaint which fails the basic Rule 12(b)(6) standard.*
8. *The Estate should be actively involved in recovering from the tortfeasors (Management) whose inaction resulted in losing its principal assets.*

NOTICE TO CREDITORS AND OTHER PARTIES IN INTEREST

*Within **THIRTY (30) DAYS** after service as evidence by the certification, and an additional **THREE (3) DAYS** pursuant to Fed. R. Bank. P. 9006(f) if you were served by mail, any party against whom this paper has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the clerk's office of the United States Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, the paper will be deemed unopposed and may be granted unless: (i) the requested relief is forbidden by law; (ii) the requested relief is against public policy; or (iii) in the opinion of the court, the interest of justice requires otherwise.*

⁹ See Footnote No. 2, page 9 of the Complaint.

WHEREFORE it is respectfully requested that this Motion BE GRANTED, with such further relief as is deemed appropriate under the circumstances.

I CERTIFY that on this same date, I electronically filed the foregoing with the Clerk of this Court via CM/ECF system, which will electronically send notification of such filing to all the parties who have requested notice and notified electronically.

In San Juan, Puerto Rico, this 19th day of July, 2022.

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s/ Wallace Vázquez Sanabria

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