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IN THE SUPREME COURT OF FLORIDA

CASE NO. 76,931

ON REVIEW FROM THE COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

JUAN VICENTE PEREZ SANDOVAL, et al. and

Petitioners,

v.

BANCO DE COMERCIO, C.A., et al.

Respondents.

ANSWER BRIEF OF RESPONDENTS

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INTRODUCTION

All references to the trial transcript are denoted by "T.___". Exhibits are "Ex.___". References to the transcripts of the September 11, 1989 and February 16, 1990, proceedings on Plaintiffs' motion for award of attorneys' fees, costs and prejudgment interest, are to the transcripts which Petitioners added as appendices to their Initial Brief. Page citations to these transcripts are denoted by "A at (the number stamped by Petitioners)". All citations to the record on appeal are denoted by "R._".

STATEMENT OF THE CASE AND OF THE FACTS

This is a case about a fraud of massive proportions on financial institutions, and the misappropriation of those institutions' assets, by their president. Plaintiff/Respondent, SOCIEDAD FINANCIERA DE COMERCIO, S.A. ("SFC"), is a credit institution which accepts deposits from the public and is organized and regulated under the Venezuelan General Law Governing Banks and Other Credit Institutions, the Venezuelan Commercial Code and other provisions of Venezuelan law. Plaintiff/Respondent, INVERSIONES CREDIVAL, S.A. ("CREDIVAL"), is a wholly-owned subsidiary of SFC. Defendant/Petitioner, JUAN VICENTE PEREZ SANDOVAL ("SANDOVAL"), was president, director and 80% stockholder (through his holding company, J.V. Persand y Compañía, C.A.), of these institutions. [R. 455-56]. As a result of SANDOVAL's actions, only some of which formed the basis for this lawsuit, these institutions, and Plaintiff/Respondent, BANCO DE COMERCIO, S.A. C.A., were intervened by the Fondo de Garantía de Depositos y Protección Bancaria ("FOGADE"), the Venezuelan equivalent of the FDIC in the United States. [R. 163-64] This action was filed against SANDOVAL and his wholly-owned Panamanian shell company, Petitioner, SANDY BAY INVESTMENTS COMPANY, S.A. ("SANDY BAY"), in the names of these intervened institutions in order to recover damages against SANDOVAL and SANDY BAY for various loans they obtained and stock transactions they conducted in express violation of Venezuelan law, public order norms and good customs.

In the Statement of the Case contained in their Initial Brief, Petitioners concede the facts upon which the trial court found them liable to Respondents for their violations of the Venezuelan General Law Governing Banks and Other Credit Institutions, as well as the Venezuelan Commercial Code. There was also little or no dispute as to the operative facts at trial. After four and one-half days of trial, the trial court found SANDOVAL and SANDY BAY liable to Plaintiffs for $12.5 million. Petitioners no longer question the basis upon which they were found liable. The only issues presented here relate to the remedies applied by the trial court and its determination of Respondents' entitlement to prejudgment interest and attorneys' fees.

Among the facts which Petitioners concede is the fact that on March 9, 1982, SANDOVAL, through his shell company, SANDY BAY, purchased all the shares of a drilling company, Anson Perforaciones, S.A. ("Anson") for a purchase price of $3.5 million. [R. 457]. He borrowed $1.5 million of that amount from SFC. [R. 458]. The $2.0 million balance of the purchase price was evidenced by two promissory notes in favor of the sellers, B. Frank Wright, Dora Wright and Delmar Wright (the "Wrights"), which notes were guaranteed by CREDIVAL. [R. 457]. On the same day that he purchased the Anson shares, SANDOVAL sold the stock through SANDY BAY to Morelia Holding Company, S.A. ("Morelia"), a wholly-owned subsidiary of CREDIVAL, for the amount of $16 million. [R. 458]. As a result of this transaction, SANDOVAL earned a $12.5 million profit in one day without putting up a cent of his own money or incurring any risk

to himself. [T. 41]. All of his maneuvers, however, were at the expense of SFC, a public depository institution which SANDOVAL controlled and which subsequently collapsed as a result of these abuses.

The original sales agreement for the Anson stock had been signed on or about December 11, 1981, and reflected that the shares were to be purchased by CREDIVAL directly from the Wrights for an undisclosed purchase price. [R. 457]. Instead, it was SANDY BAY that purchased the shares from the Wrights. [R. 457]. Contrary to the assertions of SANDOVAL in his brief, it was clearly SANDOVAL's intention from the start to sell the Anson shares to CREDIVAL for $16 million on the very day that he used SFC's money to finance a purchase of the shares by his own shell entity for only $3.5 million, earning him a profit of $12.5 million. [T. 44-50]. It was this set of facts that led the Honorable Leonard Rivkind to conclude that the actions of SANDOVAL and his affiliates violated Venezuelan law and to informally comment that they would also violate the laws of any civilized country.

Notwithstanding their apparent candor as to the operative facts, in their effort to reverse the trial court's ruling, Petitioners have misstated or obscured a number of important substantive and procedural facts. Accordingly, pursuant to Fla. R. App. P. 9.210(c), the Respondents will state the relevant facts to the extent that they were omitted, obscured or misstated by Petitioners in their Initial Brief.

Chief among the facts that Petitioners chose to obscure in their factual recitation is that prior to trial, the parties executed and filed, on or about July 11, 1988, an extensive Joint Pretrial Stipulation, as amended (the "Stipulation"). [R. 455]. Under the Stipulation, the parties agreed that the sole issue to be tried by the court was the liability of Defendants to Plaintiffs as a result of the SANDY BAY transaction. The parties further agreed that Venezuelan law governed the substance of the issues of liability and the obligations owed by the Petitioners to the Respondents.[1/] [R. 459]. The parties also specifically stipulated that the trial court should decide:

> Whether Venezuelan law provides that the prevailing party in this action is entitled to recover its fees and costs.
>
> * * *
>
> Whether prejudgment interest is available under Venezuelan law and, if so, the rate that would apply.

[R. 459]. Moreover, prior to the commencement of trial, counsel for Appellees specifically requested and obtained, without objection by Petitioners, confirmation from the trial court that the issue of attorneys' fees would be treated by post-trial motion. [T. 8-9].

1/ The Stipulation provides, in pertinent part: "As to rules of law, the parties agree that Venezuelan law controls the substance of the issues of liability and obligations with respect to the so called Sandy Bay transaction." [R. 459].

Based upon the provisions of the Stipulation and the other numerous uncontroverted facts contained therein, the trial court heard four and one-half days of testimony, which primarily consisted of expert testimony on the applicable provisions of Venezuelan law. Despite their assertion that certain provisions of the applicable Venezuelan law should not be applied to these facts, Petitioners apparently do not dispute the correctness of the expert testimony introduced at trial by Respondents. In fact, they cite liberally in their brief to the testimony of Respondents' Venezuelan law experts, Dr. Arminio Borjas and Professor Keith Rosenn. During that testimony, Respondents established, without contradiction, that:

(1) SANDOVAL and SANDY BAY used none of their own funds to purchase the Anson shares from the Wrights [T. 41];

(2) SANDY BAY agreed to pay the Wrights $3.5 million for the Anson shares, $1.5 million of which was paid out of a personal loan from SFC to SANDOVAL, which was never repaid, and $2.0 million of which was evidenced by promissory notes executed by SANDY BAY in favor of the Wrights [R. 456-58];

(3) SANDY BAY never honored the promissory notes [R. 457];

(4) CREDIVAL and its wholly-owned subsidiary, Morelia, were guarantors on the notes that SANDY BAY executed and dishonored, the guarantees having been signed

by SANDOVAL as president of CREDIVAL and Morelia [R. 457];

(5) On the very day that SANDOVAL and SANDY BAY purchased the Anson shares from the Wrights for $3.5 million, SANDY BAY sold the same shares to Morelia, a wholly-owned subsidiary of CREDIVAL, which in turn was wholly-owned by SFC, for a total consideration of $16 million [R. 456-58], [T. 38-39];

(6) All of the funds actually paid by Morelia for the Anson shares were the funds of SFC, a Venezuelan finance company which accepts deposits from the general public and is subject to the general banking law of Venezuela and the Venezuelan Commercial Code [R. 455-58];

(7) SANDOVAL, individually, actually received all of the money advanced by SFC to CREDIVAL for the purchase of the shares by Morelia from SANDY BAY, and the transaction was intended and devised to funnel the $12.5 million from SFC to SANDOVAL [T. 51-52, 89];

(8) The loans from SFC to CREDIVAL, collectively, and three out of the four loans, individually, exceeded 10% of SFC's paid-in capital and reserves [T. 109-13]; and

(9) The minutes of SFC's and CREDIVAL's Board of Directors' meetings do not reflect either board's

approval of the SANDY BAY transaction [T. 125, 259], [Ex. 6-9].

Not only does the record reflect that these facts are uncontroverted, but there is also no question but that the SANDY BAY transaction, on its face, violated applicable sections of the Venezuelan General Law Governing Banks and Other Credit Institutions, the Venezuelan Commercial Code, the Venezuelan Civil Code, public order norms and good customs. Among the violations established were:

(1) The loans from SFC to SANDY BAY and CREDIVAL exceeded 10% of SFC's paid-in capital and reserves, in violation of Ordinal 1, Article 153 of the General Law Governing Banks and Other Credit Institutions [T. 147, 156-57, 220-21];

(2) Any loan, no matter the amount, by SFC to SANDOVAL, its president, whether directly or indirectly, was expressly prohibited under the same Article 153, Ordinal 1 [T. 147];

(3) The purchase by Morelia, a 100% subsidiary of CREDIVAL, of the Anson shares from SANDY BAY, a wholly-owned company of SANDOVAL's personal holding company, J.V. Persand & Co., also violated Article 153, Ordinal 13, which prohibits the purchase by a credit institution, either directly or indirectly, of the assets of any officer or director of the bank or credit institution [T. 148]; and

(4) SANDOVAL's failure to obtain board approval from the boards of SFC and CREDIVAL violated Article 266 of the Commercial Code [T. 152-53].

In their brief, Petitioners do not dispute the trial court's interpretation or determination of the applicability of any of these provisions of Venezuelan law to the facts of record.

Upon consideration of the stipulated facts, the evidence and testimony, including the expert testimony as to Venezuelan law, the trial court found in favor of the Respondents and against SANDOVAL and SANDY BAY. Because of a pending appeal before the Court of Appeal, Third District of Florida, on a non-final order denying Defendants' motion to dismiss for forum non conveniens, the trial court was precluded from entering a final judgment at that time. Accordingly, on January 5, 1989, it entered an Order Entered Upon Conclusion of Trial finding in favor of Respondents. [R. 498]. Upon the conclusion of the interlocutory appeal, the trial court entered a Final Judgment which found each of the Petitioners, SANDOVAL and SANDY BAY, liable to Respondents for $12.5 million -- the amount of SANDOVAL's personal profit in the SANDY BAY transaction. [R. 493-97].

In its Final Judgment, the trial court expressly reserved jurisdiction to consider post-trial motions by Respondents for an award of costs, fees and prejudgment interest in accordance with Venezuelan law. Respondents thereafter filed their motion for attorneys' fees and interest, which motion was bifurcated into two separate components: (1) two hearings in which expert testimony

was taken as to whether costs and prejudgment interest were awardable under Venezuelan law; and (2) a subsequent hearing to receive evidence as to the amount of fees, costs and interest allowed. Although the portion of the motion dealing with Respondents' legal entitlement to interest, fees and costs has been concluded, Petitioners' subsequent appeals have delayed the trial court's evidentiary hearing as to the amount of fees to which Respondents are entitled. There is no dispute, however, that, to the extent the trial court was correct in applying the appropriate Venezuelan code for the award of prejudgment interest, 12% is the appropriate rate of interest to apply, whether awarded under the Venezuelan Commercial Code or pursuant to Florida Statutes. [A. at 69-70].

In the Order entered on March 14, 1990, which is at the heart of the Petition for Discretionary Review, the trial court found that (1) the right to attorneys' fees is a substantive right; (2) the Petitioners, SANDOVAL and SANDY BAY, were "totally defeated" and, therefore, as provided under Venezuelan law, were required to pay Respondents' costs and attorneys' fees; (3) pursuant to Venezuelan law, an award of legal fees could not exceed 30% of the amount recovered; and (4) Respondents are entitled to an award of prejudgment interest at the rate provided in the Official Gazettes of the Republic of Venezuela (at a maximum rate of 12% per annum) from the date that the Petitioners received the illegal $12,500,000 profit. [R. 499].

Petitioners appealed the Final Judgment and the March 14, 1990, Order by separate notices of appeal. Argument and briefing on the two appeals subsequently were consolidated. After extensive briefing by the parties, the District Court of Appeal, Third District, affirmed the trial court's orders, with one minor exception. Perez Sandoval v. Banco de Comercio, 566 So.2d 828 (Fla. 3d DCA 1990).[2/] Petitioners sought and obtained discretionary review by this Court on the District Court's holding that a timely post-trial motion for attorneys' fees was appropriate without an initial demand for such fees in the pleadings. Notwithstanding the limited basis upon which they obtained review, Petitioners proceeded to brief, over Respondents' objections, additional points relating to the relief awarded under Final Judgment and the entitlement to prejudgment interest. Respondents still maintain that these additional points do not merit review by this Court since they could not have been the proper subject of a petition for discretionary review; however, in an abundance of caution, Respondents have responded to each of Petitioners' arguments.

STANDARD OF REVIEW

The trial court's interpretation of foreign law is a question of fact. See Kingston v. Quimby, 80 So.2d 455 (Fla. 1955); Fla. Stat. § 90.202 (1989) (Law Revision Council Note - 1976). Thus, it is not reversible unless "clearly erroneous."

[2/] It found that BANCO DE COMERCIO, S.A., C.A. itself should not have been included among the Plaintiffs which were entitled to the Final Judgment and instructed the trial court to modify the Final Judgment accordingly. 566 So.2d at 828, n. 1.

Because the trial court is in the best position to judge the credibility of the witnesses, the appellate court must give the trial court great deference in its adjudications as to the credibility and testimony of the expert witnesses. See Jeffreys v. Simpson, 222 So.2d 224 (Fla. 1st DCA 1969).

Questions of Florida law, of course, are subject to de novo review.

SUMMARY OF THE ARGUMENT

Stockman v. Downs, 573 So.2d 835 (Fla. 1991), does not require reversal of the trial court's award of attorneys' fees. In the instant case, Petitioners specifically acknowledged and stipulated that one of the issues for the trial court's consideration was "whether Venezuelan law provides that the prevailing party in this action is entitled to recover its fees and costs." [R. 459]. The entry into this Joint Stipulation makes it clear that all parties were on notice of and had agreed to the submission of this issue to the trial court, making irrelevant the issue of whether or not the Respondents' claim for fees was required to have been included in the Complaint.

Moreover, attorneys' fees are a substantive right and therefore subject to award under the law of the state whose law governs the substance of the action. Florida long ago abandoned the dichotomy between substantive rights and remedies when it adopted the Restatement (Second) of the Conflict of Laws. Accordingly, both the trial court and the District Court properly held

that Respondents were entitled to recover attorneys' fees under Venezuelan law.

Further, Respondents were entitled to an award of pre-judgment interest under the Venezuelan Commercial Code. In its judgment for the Plaintiffs below, the trial court found that SANDOVAL and SANDY BAY had acted improperly by engaging in a number of illegal commercial transactions, including entering into an improper stock transaction, illegally borrowing money from SFC and obtaining guarantees of their private debt from CREDIVAL. Accordingly, under the applicable Venezuelan Commercial Code, any judgment of the trial court in Plaintiffs' favor also entitled them to obtain an award of pre-judgment interest at the rate established from time to time in that country's Official Gazette, not to exceed the rate of twelve percent (12%) per annum.

Finally, the trial court acted properly in refusing to order the return of the Anson shares to SANDOVAL and SANDY BAY. As recognized by the trial court, the appropriate award to Respondents as a consequence of Petitioners' misconduct was a ruling which (1) entitled them to receive back the $12.5 million difference between what they paid for the Anson shares and the amount paid for those shares by SANDOVAL and (2) allowed them to retain the shares. The trial court's ruling allowing them to retain the shares was appropriate, since Respondents -- not Petitioners -- were the parties that either paid, or remain liable, for the original $3.5 million purchase price of the shares. Accordingly, Respondents were entitled to retain the shares for which

they paid, as well as receive back from SANDOVAL the $12.5 million amount by which they overpaid for the shares. To allow SANDOVAL to retain the shares for which he never paid would not only provide him with a windfall, but would also enable him to retain the benefits of this illegal transaction. More importantly, however, the overwhelming weight of the evidence established that SANDOVAL and SANDY BAY violated "good customs" under Venezuelan law, which, under the law of that country, exonerates Respondents from any duty to return the Anson shares. As the fruits of illegal conduct, the return of the shares to Petitioners would have been inconsistent with both Florida's and Venezuela's public policy against illegal contracts, since it would have allowed SANDOVAL and SANDY BAY to retain the benefit of their illicit bargain.

ARGUMENT

I. THE TRIAL COURT CORRECTLY GRANTED A POST-TRIAL MOTION FOR ATTORNEYS' FEES WHERE THE PARTIES HAD JOINTLY AGREED THAT SUCH ISSUE WOULD BE RESOLVED BY THE TRIAL COURT

Petitioners argue that Respondents' failure to plead an entitlement to attorneys' fees in their Complaint should bar recovery of fees, despite Petitioners' specific agreement in the Joint Stipulation that acknowledged and affirmed that the trial court should resolve the issue of Respondents' entitlement to recover attorneys' fees. Not only does such an argument appear ludicrous on its face, but it also fails to recognize that the facts of this case fall squarely within the exception expressly recognized by this Court in its recent opinion in Stockman v. Downs, 573 So.2d 835, 838 (Fla. 1991). In Stockman, this Court expressly noted:

> However, we recognize an exception to the rule announced today. Where a party has notice that an opponent claims entitlement to attorney's fees, and by its conduct recognizes or acquiesces to that claim or otherwise fails to object to the failure to plead entitlement, that party waives any objection to the failure to plead a claim for attorney's fees. See, e.g., Brown v. Gardens by the Sea S. Condo. Ass'n, 424 So.2d 181 (Fla. 4th DCA 1983) (defendant's failure to raise entitlement to attorney's fees until after judgment not fatal to claim where issue of attorney's fees was raised at pre-trial conference and plaintiff's pre-trial statement listed defendant's entitlement fees as an issue); Mainlands of Tamarac by Gulf Unit No. Four Ass'n, Inc. v. Morris, 388 So.2d 226 (Fla. 2d DCA 1980) (parties' stipulation during trial that the question of attorney's fees would be heard subsequent to final hearing would permit recovery of attorney's fees despite failure to plead entitlement to fees).

Id. at 838. What better notice could Petitioners have than executing and filing a Stipulation which specifically described this issue as one to be resolved at trial by the trial court judge?

This case presents facts similar to the situation in Brown v. Gardens by the Sea S. Condo. Ass'n, 424 So.2d 181 (Fla. 4th DCA 1983), which was cited with approval by this Court in Downs. The prevailing party in Brown not only failed to plead a contractual right to fees in its answer, but it also failed to present formally its demand for fees for the first time until after entry of final judgment. Id. at 182. Despite these facts, however, the District Court determined in Brown that attorneys' fees were recoverable, because it was apparent that the parties were on notice of their opponent's claim for attorneys' fees, if success was achieved on the merits. In Brown, a pre-trial stipulation listed as an issue:

> 'Are any of the parties entitled to recovery of attorneys' fees and, if so, in what amount [?]'

Id. at 183. Furthermore, the trial court in Brown agreed, on the record, to reserve the issue of determining attorneys' fees until after resolution of the merits. Id.

In the instant case, the parties also specifically jointly stipulated that the trial court should consider and resolve the attorneys' fee issue. They submitted this issue:

> Whether Venezuelan law provides that the prevailing party in this action is entitled to recover its fees and costs.

[R. 459]. Moreover, just as in Brown, the Respondents here again raised the issue of attorneys' fees at the commencement of the trial:

> Mr. Coffey: Your Honor, there are just a couple of preliminary matters I would like to refer to.
>
> Consistently with my understanding of Florida law, in the event this court determines, upon a determination of the issues in the main case, that either side is entitled to attorney's fees, it is my understanding that would be separately visited at that time and it won't be necessary to try the issues in the main case.
>
> The Court: That will be reserved for future disposition.

[T. 8-9]. Petitioners' counsel never objected to the reservation of the issue for a later time.

The opinion of the District Court in Brown, in finding that the trial court should have awarded fees to the plaintiffs in that case, is equally applicable to the case at hand:

> It is manifest from the foregoing outline of events that appellees and the trial court at all pertinent times knew, recognized and acquiesced, without objection or suggestion of surprise, prejudice or disaccommodation, that appellants were claiming fees and the contract basis for the claim. . . . As matters stood, appellants were affirmatively lulled into believing that their claim was known, alive and that the same would be adjudicated. Based on these facts, appellees should not be heard or permitted to now object to appellants' failure to formally plead.

424 So.2d at 183 (emphasis supplied).

Petitioners disingenuously suggest that the Stipulation that they signed and filed with the trial court was not a stipulation to "entitlement per se". [Initial Brief at 16.]. Clearly, that is not the relevant question. In the Brown case, approved by this Court, the stipulation there was not an admission by either side that the other party was "entitled" to recover attorneys' fees. Brown, 424 So.2d at 183. As here, that stipulation specifically reserved the question of entitlement to a later time. As recognized by this Court in Stockman, the real issue here is notice, not whether there was a demand for fees contained in the Complaint. Stockman, 573 So.2d at 838. There is absolutely no question that all parties here were on notice that the Plaintiffs intended to seek an award of attorneys' fees if they prevailed at trial. Thus, under the exception to the pleading requirement recognized by the Stockman decision, the trial court properly considered and granted Plaintiffs' post-trial motion for attorneys' fees under Venezuelan law.

II. VENEZUELAN LAW CONTROLS THE RIGHT TO COSTS AND ATTORNEYS' FEES, AND THE TRIAL COURT'S INTERPRETATION OF ITS PROVISIONS WAS CORRECT

Petitioners next assert that the right to fees and costs is "procedural" and, therefore, to be decided under Florida law. They also argue that, even if Venezuelan law does apply, no attorneys' fees should have been awarded against them. As we shall see, however, Petitioners' arguments again are as misguided as they are misleading.

Once again, Petitioners ignore the Stipulation, under which the parties agreed that the trial court should decide the parties' entitlement to attorneys' fees under Venezuelan law. [R. 459]. The existence of the Stipulation effectively disposes of the choice-of-law issue. However, even if one were to ignore the Stipulation, as Petitioners apparently hope that this Court will do, Florida choice-of-law principles alone are sufficient to dictate the same conclusion reached by the trial court regarding the applicability of Venezuelan law. Furthermore, the trial court correctly determined that under Venezuelan law, Petitioners were entitled to an award of their fees.

A. The Right to Attorneys' Fees Is a Substantive Right.

Florida law recognizes that the right to attorneys' fees is a substantive right. L. Ross, Inc. v. R.W. Roberts Construction Company, Inc., 481 So.2d 484 (Fla. 1986). As the Fourth District Court of Appeal has observed:

> The right to an attorney's fee is substantive because it gives to a party who did not have that right the legal right to recover substance (money!) from a party who did not theretofore have the legal obligation to render or pay that money. The right is not merely a new or different remedy to enforce an already existing right and is, for that reason, not merely procedural.

L. Ross, Inc. v. R.W. Roberts Construction Co., 466 So.2d 1096, 1098 (Fla. 5th DCA 1985), aff'd, 481 So.2d 484 (Fla. 1986). By virtue of the agreement in the Stipulation that the substance of

the dispute between the parties be governed by Venezuelan law, the substantive nature of attorneys' fees dictates that Venezuelan law regarding attorneys' fees control.

B. Choice-of-Law Principles Require the Application of Venezuelan Law.

The recognition by Florida courts of the substantive nature of attorneys' fees ends the analysis of the law regarding Petitioners' entitlement to recover such fees, since the parties' Stipulation required the trial court to apply Venezuelan law. Additionally, the Restatement (Second) Conflict of Laws generally provides that the classification or characterization of facts for inclusion in specific legal categories is determined in accordance with the law of the forum. Restatement (Second) Conflict of Laws § 7 [hereinafter Restatement (Second)]. Such categorization includes the determination whether an issue is "substantive" or "procedural" for choice-of-law purposes. See Restatement (Second) § 7 comment d, illustration 2. Thus, whether Venezuela itself characterizes the issue as "substantive" or "procedural" is irrelevant to this Court's analysis, since the law of the forum, Florida, considers attorneys' fees to be a substantive issue. Accordingly, since the trial court determined, and the parties stipulated, that Venezuelan law was to control the substantive issues in this case, the trial court had no choice but to apply Venezuelan law to determine Respondents' entitlement to obtain an attorney's fee award.

Further, even if one were to ignore the clear law in this regard, and assume the question was one of "procedure", the next step would be a choice-of-law analysis as to procedural issues. Such an analysis leads to the same result.

Even assuming, arguendo, that Venezuela chooses to treat the question of attorneys' fees and costs as one of judicial administration, prevailing choice-of-law principles dictate that a Florida court nevertheless apply Article 274 of the Venezuelan Code of Civil Procedure, which requires the award of "costs"[3/] against the party that is "totally defeated". The Second Restatement describes the categories of issues that are considered "procedural" or "substantive" for choice-of-law purposes.[4/] Generally, only issues relating to judicial administration are controlled by the local rules of the forum state. Restatement (Second) § 122. More specifically, the Second Restatement lists the following issues as "procedural":

(1) Proper courts (§ 123);
(2) Form of action (§ 124);
(3) Service of process and notice (§ 126);
(4) Pleading and conduct of proceedings (§ 127);
(5) Pleading of set-offs, counterclaims or other defenses (§ 128);
(6) Mode of trial (§ 129);
(7) Obedience to the Court (§ 130);
(8) Enforcement of judgments (§ 131);

3/ Under the Venezuelan Code of Civil Procedure, an award of costs is defined to include recovery for attorneys' fees.

4/ The Second Restatement wisely cautions against automatic categorization of issues as "substantive" or "procedural" and recommends, instead, that courts face directly the question of whether the forum's rule or the foreign state's rule should be applied. Restatement (Second) § 122 comment b.

(9) Certain issues relating to burden of proof (§ 133);
(10) Certain issues relating to going forward with the evidence and presumptions (§ 134);
(11) Sufficiency of evidence (§ 135);
(12) Notice and proof of foreign law (§ 136);
(13) Witnesses (§ 137); and
(14) Admissibility of evidence (§ 138).

In most of these instances, the local rules of the forum should govern, unless there is a reason why the rules of another state should be applied. The award of attorneys' fees and costs is notably absent from this listing.

In addition to the general listing of "procedural" issues, the Second Restatement also suggests the factors that a court should consider when in doubt as to whether the forum's local law should apply, rather than the local law of a foreign state.[5/] These factors include:

(1) whether the issue is one to which the parties are likely to have given thought in the course of entering into the transaction;

(2) whether the issue is one whose resolution would be likely to affect the ultimate result of the case;[6/]

(3) whether the precedents have tended consistently to classify the issue as "procedural" or "substantive" for choice-of-law purposes; and

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5/ By "local" law, the Second Restatement refers to the laws of a state without reference to its choice-of-law rules. Restatement (Second) § 4(1).

6/ "If so, the otherwise applicable law should be applied unless application of the local law of the forum is required by the dominant interest of the forum state in the decision of the particular issue." Restatement (Second) § 122 comment a.

(4) whether an effort to apply the rules of judicial administration of another state would impose an undue burden on the forum state.

Restatement (Second) § 122 comment a. An analysis of the above-stated factors leads to the conclusion that this Court should affirm the trial court's award of attorneys' fees against SANDOVAL and SANDY BAY in accordance with Venezuelan law.

First, the actions taken by SANDOVAL occurred almost exclusively in Venezuela. The injury was suffered in Venezuela by Venezuelan entities. Because SANDOVAL's actions were taken as an officer, shareholder and director of Venezuelan corporations, one must assume that he shaped his actions with reference to the local law of Venezuela. SANDOVAL could hardly be surprised that Venezuelan law would dictate his ultimate liability to the Respondents. It matters not that the transaction was a business transaction or that Anson itself was incorporated in Panama, despite Petitioners' suggestions to the contrary. Indeed, had SANDOVAL shaped his actions with regard to the law of another state, he might well have included a choice-of-law provision in the applicable documentation, which he apparently did not.

Second, application of Venezuelan law will likely affect the ultimate result in the case. If Venezuelan law is applied, the Respondents will receive something of substance "(money!)". See L. Ross, Inc., 466 So.2d at 1096. If Florida's local law is applied, they will not be reimbursed for the attorneys' fees that they expended in enforcing their rights under Venezuelan law.

Moreover, it can hardly be said that the award of attorneys' fees to the Respondents is contrary to the public policy of Florida or that Florida has a dominant interest in not awarding attorneys' fees. Although Florida generally follows the "American rule" in denying attorneys' fees to the prevailing party in the absence of a contract or statute, the Florida Legislature and Supreme Court have seen fit to provide for the award of attorneys' fees in appropriate circumstances. See, e.g., Fla. Stat. § 57.105 (1989); Fla. R. Civ. P. 1.380. In the absence of a dominant interest of Florida against the award of attorneys' fees, the law of Venezuela should control. Restatement (Second) § 122 comment a.

As to the third factor, although no reported Florida case has expressly engaged in a choice-of-law analysis regarding attorneys' fees, it is apparent that the courts have assumed that the law to be applied in the award of attorneys' fees is the same as the law governing the "liability" issues in the case. In two instances, the Fourth District Court of Appeal has held that a Florida statute governing the award of attorneys' fees against insurers could not be applied in litigation over an insurance policy made and delivered in Cuba. Confederation Life Association, v. Alvarez, 276 So.2d 95 (Fla. 4th DCA 1973); Pan-American Life Insurance Company v. Fuentes, 258 So.2d 8 (Fla. 4th DCA 1971). These cases suggest that if foreign law controls the substance of the action, the provisions of foreign law also will control the award of attorneys' fees. The cases cited by Petitioners for the proposition that the award of fees is procedural are completely

inapposite, as they do not purport to consider any choice-of-law questions.[7/]

Finally, assuming that one could consider Article 274 of the Venezuelan Civil Procedure Code to be a rule of judicial administration, it is also clear that application of Article 274 will not impose an undue burden on the Florida court, the fourth factor referenced in the Second Restatement. As the proceedings thus far indicate, the trial court was well prepared to receive expert testimony on Venezuelan law and to resolve conflicts in opinion among the expert witnesses.[8/]

It is irrelevant whether Venezuela chooses to provide for the award of attorneys' fees under its Civil Procedure Code or in some other code. Once a Florida court determines that the issue is a substantive one under Florida law, it must automatically apply the local law of Venezuela, without regard to Venezuela's characterization of the issue of an attorneys' fee award as "procedural" or "substantive". Even if we assume that the award of fees relates

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7/ Even if one accepts Petitioners' alternate categorization of the right to attorneys' fees as "remedial", Venezuelan law still controls. Restatement (Second) § 309 (Directors' or Officers' Liability), § 207 (Measure of Recovery), § 171 (Damages).

8/ The trial court indicated that once it decided that attorneys' fees were recoverable under Venezuelan law, it would determine the amount of the entitlement under the familiar principles of Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985). [A. at 18-19]. Although it is somewhat unclear whether this portion of the post-trial proceedings is "procedural" or "substantive", Petitioners do not object to such a determination. In such event, then, the trial court will not be required to engage in any "guess-work" as to the procedures followed by Venezuelan judges.

to judicial administration, the appropriate analysis under the Second Restatement still leads to the inevitable conclusion that this Court should affirm the trial court's award of attorneys' fees in accordance with Venezuelan law.

C. Attorneys' Fees Were Awardable Against Defendants Because They Were Totally Defeated.

As a fall-back to their unavailing choice-of-law arguments, Petitioners also challenge the correctness of the trial court's interpretation of Venezuelan law regarding the award of attorneys' fees and costs. Petitioners' position here is even more hopeless, as they carry a heavy burden of demonstrating reversible error. The Court, on appeal, must give great deference to the trial court's findings as to the provisions of Venezuelan law. They are factual findings, subject only to the "clearly erroneous" standard of review. See Kingston v. Quimby, 80 So.2d 455 (Fla. 1955); Fla. Stat. § 90.202 (1989) (Law Revision Council Note - 1976). Moreover, they are also based on the trial court's assessment of the testimony provided by the expert witnesses. A judgment based on the trial judge's evaluation of conflicting evidence and his determination of the credibility of witnesses may not be disturbed on appeal except by a clear showing that it is unsupported by competent and substantial evidence or otherwise constitutes an abuse of discretion. Jeffreys v. Simpson, 222 So.2d 224 (Fla. 1st DCA 1969). Petitioners have shown neither clear error nor lack of competent evidence.

As Plaintiffs' expert, Dr. Borjas, testified, Article 274 of the Civil Procedure Code (Artículo 274, Código de Procedimiento Civil) provides for the mandatory assessment of costs, including attorneys' fees, against a party that is "totally defeated." [A. at 14].[9/] Pursuant to the 1986 amendment to Article 274, which governs here, the trial judge has no discretion in whether or not to award the fees; his only discretion lies in determining the reasonableness of the fees incurred by the prevailing party if the reasonableness is challenged by the losing party. [A. at 15]. Because the trial court here rendered judgment after the effective date of the 1986 amendment, Dr. Borjas concluded that it was the 1986 amendment that controlled. [A. at 17].

Petitioners attempt to escape liability for attorneys' fees by arguing that the concept of "total defeat" exonerates them simply because, prior to trial, Respondents exercised their rights under Florida procedural rules not to pursue certain claims that originally had formed part of the Complaint. Whatever surface appeal is afforded this argument fades quickly upon closer analysis, when it becomes obvious that Petitioners have, once again, obscured a very basic fact: pursuant to the Stipulation, the parties specifically agreed that the cause would be tried solely on the issue of the SANDY BAY transaction. [R. 455]. Respondents prevailed at trial on the only issue presented; therefore, Petitioners were totally defeated. Moreover, as Respondents seek

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9/ "Article 274. - The party who is totally defeated in a proceeding or in an incident of a trial shall be ordered to pay the court costs."

only to recover those attorneys' fees incurred for the trial preparation and conduct relating to the SANDY BAY transaction, in which Petitioners were totally defeated, and not for work done with reference to any previously disposed of claims, Respondents are entitled to recover the full amount of such fees incurred.

Under the Florida Rules of Civil Procedure, which governed the procedure below, the Respondents were absolutely privileged to go to trial on less than all of their claims. Were this Court determining entitlement under a statutory or contractual fee provision in accordance with Florida law, Respondents would be considered the "prevailing party" regardless of whether they proceeded to try all of their initial claims, or even if Respondents prevailed on only one count of a multi-count complaint. Hendry Tractor Company v. Fernandez, 432 So.2d 1315 (Fla. 1983); Bill Rivers Trailers, Inc. v. Miller, 489 So.2d 1139 (Fla. 1st DCA 1986).

Also contrary to Petitioners' suggestions, Dr. Borjas testified that the Venezuelan Civil Code eliminated the concept of "temerity", which Petitioners insist is a prerequisite for an award of costs to the successful party. As Dr. Borjas testified, "the new Code of Civil Procedure from 1986 completely leaves the prior concept [of temerity] and what determines the payment of costs is the total defeat of a party." [A. at 32]. Thus, the applicable 1986 version of the Code applies the purely objective standard of "total defeat" and eliminates the judge's subjective ability to determine that the losing party "has had good reason to bring liti-

gation regarding which there will be an express statement made regarding the same in the judgment." (quoting Article 172, Civil Procedure Code) (Artículo 172, Código de Procedimiento Civil) (1916 version). [A. at 32-33]. There is no question that Petitioners were totally defeated at trial on the legality of the SANDY BAY transaction. Therefore, at a minimum, Petitioners are obligated to pay Respondents' trial expenses and attorneys' fees.

Also contrary to Petitioners' suggestion, the mere fact that a law must be interpreted does not, in and of itself, imbue the losing party's cause with reasonableness. As Dr. Borjas pointed out in his testimony, "all cases require hermeneutic analysis in order to appreciate a decision." [A. at 33].[10/] As the trial court informally observed at the conclusion of the case, SANDOVAL's actions not only violated the express requirements of Venezuelan law, but they also violated the norms of every civilized society. Under such circumstances, Petitioners can hardly argue that they had a reasonable basis to defend against the Respondents' claims. More importantly, however, this Court need not concern itself with whether or not Petitioners had a reasonable basis for their defense. As Dr. Borjas testified, under the applicable 1986 Code, it is only the concept of "total defeat" that is determinative, and the courts no longer have the ability to evaluate subjectively whether of not the Petitioners had a reasonable motive for their defense. [A. at 31-32].

10/ "Hermeneutic" means "interpretative." Webster's Seventh Collegiate Dictionary (1970).

III. PREJUDGMENT INTEREST WAS PROPERLY ASSESSED UNDER THE VENEZUELAN COMMERCIAL CODE AND OTHER APPLICABLE LEGAL PRINCIPLES

Petitioners similarly fail to establish that the trial court's award of prejudgment interest under the Venezuelan Commercial Code was clearly erroneous. Under Venezuelan law, the award of prejudgment interest is an element of damages and, therefore, is a part of the Plaintiffs' substantive right to be made whole for the damages caused by the Defendants. [A. at 20-23]. Specific code provisions governing Venezuelan commercial law expressly establish a right to the award of interest as well as the amount.

All matters in Venezuela referring to banks, commercial entities and their officers are governed by the Venezuelan Commercial Code, unless displaced by special law. Article 200, Commercial Code (Artículo 200, Código de Comercio). [T. 143, 162]. The jurisdiction of the Commercial Code specifically extends to wrongful or "illicit" acts against commercial entities. Ordinal No. 9, Article 1090, Commercial Code (Ordinal 9° del Artículo 1090, Código de Comercio).[11/] Article 108 of the Venezuelan Commercial Code (Artículo 108, Código de Comercio) establishes that all monetary obligations in matters governed by the Commercial Code bear inter-

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11/ The applicability of the Commercial Code to wrongful acts in addition to contractual disputes is further confirmed by the following authorities: Gaceta Forense, Tercera Etapa, Vol. II, No. 108, Pág. 1,109 (reporting the opinion of June 4, 1980, by Magistrate José S. Nuñez Aristimuño); Gaceta Forense, Tercera Etapa, Vol. 1, No. 117, Pág. 1,064 (reporting the opinion of September 29, 1982, by Magistrate José R. Duque-Sanchez); Alfredo Morales Hernandez, Curso de Derecho Mercantíl, (Vol. 1), at 196 (Mercantile Law Course).

est at the market rate, so long as the amount does not exceed a 12% annual rate.

Article 108 of the Venezuelan Commercial Code provides in part:

> Article 108(1) - Mercantile debts of liquid and demandable sums of money rightfully accrue the market interest, as long as the same does not exceed twelve percent (12%) annually.

Where, as here, one party has come into possession of another's property in violation of Venezuelan law, interest is awarded by the judge at the appropriate rate of interest, in this case, twelve percent (12%) per annum.

Dr. Borjas concluded:

> My opinion is that the facts that have been heard in this procedure, the obligations that have been brought forth during the hearing are commercial obligations and Article 108 of the Venezuelan Commercial Code states that commercial obligations, the commercial obligations produce as an effect the payment of interest which are to be the normal market rate of interest as long as they do not exceed 12 percent annual.

[A. at 24]. Dr. Borjas' conclusions are further supported by the decision of April 28, 1981 by the Venezuelan Supreme Court, upholding the authority of the Venezuelan Central Bank to set interest rates in excess of twelve percent under certain circumstances. In that opinion, the Venezuelan Supreme Court observed that:

> Article 2, Commercial Code, Section 14 states that bank operations are objectively commercial. Apart from being conducted by merchants

> or non-merchants, this means that any and all contracts are subject to commercial law and jurisdiction (Articles 109 and 1090, Section 1, et seq.)

Decision of April 28, 1981, at p. 151.

Thus, Petitioners' contention that the Civil Code (with its 3% cap on interest) should apply is completely untenable. There is no dispute that SFC is a financial institution and that CREDIVAL is also a commercial entity that is a 100% subsidiary of SFC. As the trial court found, these institutions were damaged by SANDOVAL's actions taken in direct violation of the Venezuelan General Law Governing Banks and Other Credit Institutions, as well as the Venezuelan Commercial Code. As established by the testimony of Dr. Borjas and in accordance with the provisions of Venezuelan law and the authorities mentioned above, under such circumstances there can be no question but that the Commercial Code controls the remedy to be afforded.

Additional grounds for the award of such pre-judgment interest are the general theories of indemnification and damages under Venezuelan law. The trial court found that SANDOVAL's actions were in violation of express provisions of Venezuelan law and against the rules of public order and good customs in Venezuela. Under such circumstances, the actions of SANDOVAL and SANDY BAY are considered an absolute nullity under Venezuelan law, and the remedy to be afforded to the Respondents is to declare the actions a nullity and indemnify them for all damages caused by the illegal act. Melich Orsini, La Reparación de los Daños por el

Juez, "Estudios de Derecho Civil" (The Award of Damages by the Court, "Studies in Civil Law"), at 304 (hereinafter "Orsini at _____"). In order to make Respondents whole, the trial court must award prejudgment interest from the date of the null act. See Orsini, supra, at 350.

As Dr. Borjas testified, the Venezuelan courts award interest to:

> keep the person who has suffered the damages by default . . . or by noncompliance of the other party to keep them from suffering any damages as a consequence of the illegal or illicit behavior of the other party. . . . The judgment reflects or tries to bring the situation back to the period before the damages were caused. In that sense there are multiple ways to try to repair the damages that were caused and one of the ways to try to repair those damages is through the payment of interest.

[A. at 21]. Thus, the Venezuelan courts have the general power to indemnify plaintiffs for the harm caused by a defendant's illicit acts. In order for the Respondents here to be made whole, it follows that an interest rate commensurate with prevailing market rates in Venezuela must be applied.[12/]

In Venezuela, the Venezuelan Central Bank (Banco Central de Venezuela), is the official source for establishing market interest rates. Numeral 11 del Artículo 28 de la Ley del Banco Central de Venezuela (Section 11, Article 18, Law Governing

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12/ Florida law is no different. A trial court in Florida has no choice but to award prejudgment interest; it is a purely ministerial act. Argonaut Insurance Co. v. May Plumbing Co., 474 So.2d 212, 215 (Fla. 1985).

Venezuelan Central Bank). The Official Gazette of the Republic of Venezuela reflects that the market rate of interest for dollars in Venezuela from March 9, 1982, the date of the SANDY BAY transaction, to the present has never fallen below 12%. [A. at 24-26]. Thus, the appropriate interest rate is 12%, just as it would be if Florida law applied to this question. Under these circumstances, application of any interest rate below that would not make the Plaintiffs whole and would, instead, reward Petitioners, SANDOVAL and SANDY BAY, for their wrongful acts.

IV. THE REMEDY FASHIONED BY THE TRIAL COURT FOLLOWED VENEZUELAN LAW AND WAS CONSISTENT WITH FLORIDA'S PUBLIC POLICY AGAINST ILLEGAL CONTRACTS

Petitioners also complain that the final judgment of the trial court violated Florida's public policy because it ordered SANDOVAL and SANDY BAY to surrender their illegal $12.5 million profit without also requiring that the Anson shares be returned to Petitioners. Petitioners suggest that the parties should have been restored exactly to status quo ante, despite the illicit nature of the SANDY BAY transaction. Once again, Petitioners' arguments miss the mark.

Under any theory of law, any order resulting in the return of the Anson shares to SANDY BAY, SANDOVAL's wholly-owned corporation, would have allowed SANDOVAL to benefit from his own wrongdoing. As Professor Rosenn observed at trial, "I cannot believe in any society that looting one's own bank is good moral custom." [T. 229].

It is undisputed that the $1.5 million actually paid to the Wrights by SANDOVAL or SANDY BAY for the Anson shares came from an illegal loan by Plaintiff, SFC, to SANDOVAL, which loan was orchestrated by SANDOVAL himself. [R. 458]. The loan has never been repaid. The balance of the purchase price was evidenced by two notes from SANDY BAY to the Wrights and guaranteed by CREDIVAL and Morelia, and on which SANDY BAY promptly defaulted. [R. 457]. Since SANDY BAY and SANDOVAL put none of their own money into the original purchase of the Anson shares from the Wrights, and have defaulted on all debt incurred, to allow Petitioners to retain the benefit of their illegal bargain by retaining ownership of the shares at no cost to them, while CREDIVAL remains liable for payment on its guarantee to the Wrights, would be a gross miscarriage of justice. Rather than creating an incentive for one contemplating such an illegal transaction, this Court must affirm the trial court judgment divesting SANDOVAL of any gain he might otherwise obtain from the improper scheme he orchestrated at the expense of the Respondents. [T. 229-30].

Otherwise, the true "windfall" in this instance would be reaped by SANDOVAL and SANDY BAY. How can it be seriously suggested that Petitioners should be allowed to keep the Anson shares for which they paid nothing, while leaving SFC and CREDIVAL liable for the $3.5 million original purchase price? On the other hand, by undoing the entire transaction, Respondents are relieved of the improper expenditure made on their behalf by SANDOVAL, and somewhat protected, by retaining the shares (at whatever value they might

have), in the event that the Wrights seek payment from CREDIVAL on its guarantees of the unpaid promissory notes. The trial court's approach also is consistent with the equitable concept of constructive trusts, which has been applied in identical circumstances when bank officers have wrongfully used bank assets to purchase assets in their personal name. Garner v. Pearson, 545 F. Supp. 549 (M.D. Fla. 1982).

Moreover, Petitioners do not dispute that the trial court correctly applied Venezuelan law insofar as it recognized that certain transactions are so against public norms and good customs that they must be absolutely nullified by a court. As Respondents' experts testified, Petitioners did, in fact, violate "good practices or customs" in their behavior. [T. 166, 266]. As a result, the transactions were so illicit in nature as to require the court to insure that Petitioners should derive no benefit from them, thereby eliminating any requirement that the Anson shares be returned to the Petitioners. Had such shares been returned, SANDOVAL would have received the benefit of his improper and illegal bargain, since he would have retained stock for which he never paid a dime.

Additionally, Petitioners argue improperly that the trial court was bound to apply Florida concepts of restitution. This argument is directly contrary to the Stipulation signed below that Venezuelan law controlled the substance of the obligations of the parties. Moreover, under the "most significant relationship" test adopted by the Second Restatement and followed in Florida,

Venezuelan law is the appropriate choice for determining the rights and liabilities relating to restitution. Restatement (Second) § 221, comment d.

Not only is the trial court's ruling a correct application of Venezuelan law as established by the expert testimony, but it is also consistent with the treatment of illegal contracts under Florida law. Thus, assuming arguendo that Florida law could apply, the result is still the same. Illegal contracts are unenforceable. Local No. 234 of United Association of Journeymen and Apprentices of Plumbing and Pipefitting Industry v. Henley & Beckwith, Inc., 66 So.2d 818, 821 (Fla. 1953). "There is no legal remedy for that which is illegal itself." D & L Harrod, Inc. v. U.S. Precast Corp., 322 So.2d 630, 631 (Fla. 3d DCA 1975); see also Spiro v. Highlands General Hospital, 489 So.2d 802 (Fla. 2d DCA 1986). Where a contract is prohibited by its character or some other law, or is malum in se or violative of public policy, a party knowingly entering into such a contract cannot recover the consideration it has paid pursuant to such illegal contract. P.C.B. Partnership v. City of Largo, 549 So.2d 738 (Fla. 2d DCA 1989). The only effect of refusing to apply Venezuelan law would have been the application of Florida law, with its attendant policies regarding the unenforceability of illegal contracts. Consequently, the trial court exactly followed Florida's public policy in its application of Venezuelan law.

Petitioners also allude to the lack of evidence of valuation of the shares as an apparent defense to the relief afforded

Respondents. No such testimony was presented at trial since such proof was not necessary to establish the violations of Venezuelan law that were at issue. The reality is that whatever the value of the Anson shares,[13/] SANDOVAL violated Venezuelan law merely by orchestrating a transaction in which (1) he used his shell company, SANDY BAY, to buy the Anson shares for an apparent bargain-basement price of $3.5 million (financed by SFC and guaranteed by CREDIVAL), and, (2) on the same day, resold them to Morelia for $16 million, all of which was paid by SFC and CREDIVAL.[14/] Whatever the value of the shares, SANDOVAL's scheme was in violation of Venezuelan law, and, as noted by the Honorable Leonard Rivkind, contrary to the laws of any civilized country. The trial court's ruling was both a correct interpretation of Venezuelan law and consistent with Florida's public policy.

13/ SANDOVAL himself testified that Anson's major asset, Perforaciones Delta, S.A. (of which it owned 98%), had a negative net worth of $1.5 million. [T. 66].

14/ Petitioners suggest in passing that restitution could not be made without Morelia's joinder in the action. That fact that the shares must not be returned to Petitioners effectively disposes of this argument. Moreover, it is too late for Petitioners to raise Morelia's absence, as they never raised it below.

CONCLUSION

None of the arguments advanced by Petitioners in their Initial Brief justify reversal of the decisions of the Third District Court of Appeal and the Honorable Leonard Rivkind below. Based on the foregoing arguments and authorities, this Court should affirm the judgments and opinions below in their entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by mail on: ARNALDO VELEZ, ESQ., Taylor, Brion, Buker & Greene, P.A., 14th Floor, 801 Brickell Avenue, Miami, Florida 33131, Attorneys for Petitioners, this 5th day of June, 1991.

RAQUEL A. RODRIGUEZ

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