

Commonwealth of Puerto Rico
COURT OF APPEALS
CAGUAS-HUMACAO JUDICIAL REGION
PANEL IX

SLBD REALTY, INC.

Appellant

in.

BERRIOS FURNITURE STORES,
BERRIOS COMPANIES

Appellee

KLAN201500199

Appeal from the Court of

First Instance
Superior Room
Caguas

Civil No.:
E AC2006-0104
(404)

On:
Failure to comply with
Contract and Damages and
Damages

Panel composed of its president, Judge Coll Martí, Judge Domínguez Irizarry and Judge Lebrón Nieves

Coll Martí, Judge Rapporteur

JUDGMENT

In San Juan, Puerto Rico, on May 31, 2016.

SLBD Realty, Inc. (SLBD) appears and appeals from a Judgment of the Court of First Instance, Superior Chamber of Caguas, in which said forum declared a lawsuit inadmissible filed by SLBD against Mueblerías Berríos, Empresas Berríos, Inc., Manufacturing Company, Inc., FGR Special Society, SE, Realty Companies, Inc., Florencio Berríos Castrodad, Fulana de Tal and the marital property regime established by them, and Florencio Berríos Castrodad h/n/c Berríos Furniture Stores. In the lawsuit It was alleged that the actions of Mr. Florencio Berríos Castrodad, representing, and as owner of the corporations that make up the corporate framework called Berríos Furniture Stores, when contracting a purchase option with SLBD The "sale and leaseback" type transactions were fraudulent. That is, SLBD claims that the appellant caused him damages by engaging in fraud in the contracting, because he made SLBD believe that Berríos Furniture would be the part

lessee in the part of the business that constituted the "leaseback",

But it wasn't like that.

On the other hand, according to the appellant, what was agreed in the
The Purchase Option Agreement clearly states that the
The lessee corporation in the sale and leaseback was FRG
Special Society, a separate corporation that has nothing to do with
with Berríos Furniture Stores or with Berríos Companies, Inc.

Initially, in 1974, Mr. Florencio Berríos
He started his furniture business under the name Mueblerías
Berríos. Around 1980, the name changed to Empresas Berríos.
Florencio Berríos maintains real estate businesses, development of
Shopping centers and buying and selling properties.

For decades, the trade name by which everyone
They know the companies of Mr. Florencio Berríos, they are furniture stores
Berríos, despite the fact that there is no corporation or entity that
bear that name.

The FRG Special Society Corporation, whose president and
The sole shareholder is Florencio Berríos, who owns a warehouse and
furniture distribution center located in Cidra, Puerto Rico.

All the furniture offered is stored in this warehouse.
for sale in the over 80 furniture stores in Berríos,
distributed throughout the island.

Having read the transcript of the oral test, we conclude to adopt
such as our determinations of fact formulated by the
first instance forum, namely:

1. Mr. Raúl Rodríguez Lugo is engaged in the business of
real estate. He has worked as an appraiser and doing
real estate businesses such as buying and selling

Development. Mr. Raúl Rodríguez Lugo is the president and shareholders of SLBD. They are also shareholders of SLBD Mr. Jorge Rodríguez Lugo and Mr. Donald Uderitz, Mr. Jesús J. Suárez and Mr. Frederick Riefkohl.

2. Mr. Berríos Castrodad is a businessman and is married to Mrs. Irma Santos Casilla. Mr. Berríos Castrodad owns Empresas Berríos and, In addition, he has been involved in the real estate business, specifically in the development of centers commercials already buying and selling properties.
3. In May 2005, Mr. Carlos Guardiola, "broker" of Mr. Raúl Rodríguez informed Mr. Raúl Rodríguez on the possibility of a *sale and lease back agreement* for the Distribution Center of Berríos Furniture Stores, hereinafter "Center of Distribution".
4. Mr. Berríos Castrodad is the sole shareholder of the FRG, SE
5. FRG, SE, owns the Distribution Center.
6. From 2005 to the present, Empresas Berríos is the lessee of the Distribution Center.
7. Thus, Mr. Carlos Guardiola Meléndez and Mr. Jorge Fernández, Mr.'s real estate brokers. Raúl Rodríguez coordinated a meeting that was celebrated on May 25, 2005, between Mr. Raúl Rodríguez Lugo, representing Citywise, Inc., now SLBD, and Mr. Berríos Castrodad.

8. During the meeting, Mr. Berríos Castrodad showed him the entire Distribution Center to Mr. Raúl Rodríguez Lugo.
9. On June 2, 2005, Mr. Raúl Rodríguez Lugo, As president of CityWise, he drafted a letter, in henceforth called Letter of Intent, which included the agreements reached between him and Mr. Berríos Castrodad at the meeting of May 25, 2005. FRG He had no legal representation during the negotiation of the Letter of Intent.
10. The letter indicated that the annual rent was agreed upon in \$2,600,000.00 triple net and would increase according to agreed.
11. The Letter of Intent stated that: (i) simultaneously with the purchase of the Center Distribution, Berríos Furniture Stores would sign a contract of lease for a term of 15 years with a 10-year renewal; (ii) the annual rent would amount to \$2,600,000.00, triple net, and would increase automatically as follows:
- 2nd year: 3% increase
 - 4th year: 7% increase
 - Year 6: Market adjustment (minimum 5% and maximum 7%)
 - 9th year: 5% increase
 - 11th year: adjustment to market income (minimum 5% and maximum 7%)
 - 14th year: 5% increase
12. At the time of drafting and signing the Letter Mr. Raúl Rodríguez Lugo was unaware that his intention was The owner of the Distribution Center was FRG, Sociedad Special.

13. At the time of conducting the negotiations, the intention
Mr. Berríos Castrodad's wish was that FRG would sell him
SLBD the Distribution Center and Berríos Companies
out was the tenant of SLBD.
14. The Letter of Intent was signed by Mr. Rodriguez
Lugo, as President and representative of CityWise.
The letter stated "that we agree with what
Previously, please sign in the space provided and
return duplicate copy."
15. The Letter of Intent was signed by Mr. Berríos as
representative of "Mueblerías Berríos" for the "sale and
Furniture Distribution Center rental
Berríos in Cidra."
16. In 2005, the official name of the company that
He owned the Berríos Furniture stores, he was
Berríos Companies, Inc.
17. Berríos Companies, Inc., was the parent corporation that owned
of each and every corporation that
They make up the conglomerate of the Furniture business
Berríos. Every store across Puerto Rico sold
furniture retail under the trade name of
"Berríos Furniture Stores".
18. In 2005, "Mueblerías Berríos" was the name
commercial space used for selling furniture to
retail by certain subsidiaries of Companies
Berríos.
19. Every store across Puerto Rico that sold
furniture retail under the trade name of
"Mueblerías Berríos" belonged to a corporation

different, each of these being a subsidiary of Berríos Companies.

20. The inventory sold by the subsidiaries that were furniture store owners, however, did not belong to them while said inventory was stored in the Distribution Center, but to a subsidiary of Empresas Berríos called EBX, Inc.
21. Each store had inventory for purposes of showing customers different types of furniture that they could buy, like a kind of "showroom", but said inventory was not sold to the customer.
22. When a customer was interested in buying a piece of furniture, the corporation that owned that store bought that furniture to EBX, Inc., and had it picked up at the Distribution Center for customer delivery.
23. Berríos Companies was the lessee of the Center of FRG distribution for the time of the negotiations in question and continues to be the current lessee of the Distribution Center.
24. No subsidiary corporation of Empresas Berríos with a furniture store was a tenant of the Center Distribution.
25. In 2005, no corporation that marketed itself and would sell furniture under the trade name "Furniture Stores Berríos" was the lessee of the Distribution Center, nor owner of the inventory that was stored there.
26. The Letter of Intent refers only to "Furniture Stores Berríos" and does not state that they are being included as

part of the agreement all entities affiliated with, or
subsidiaries of Empresas Berríos.

27. Regarding the lease of the Distribution Center,

The Letter of Intent, where relevant, establishes the
following:

Simultaneously with the purchase of the distribution
center, Mueblerías Berríos
will sign a lease agreement for a fixed term of 15 years
with an option to renew for 10 years.

28. The aforementioned Distribution Center was subject to a

mortgage with Citibank, NA ("Citibank"), the creditor of
Berríos Companies, with real guarantees on all
its assets and those of its subsidiaries.

29. The Letter of Intent states that the purchase of the Center

Distribution would be "subject to contract", and that the
"The lease agreement shall be written in accordance with
the legal requirements to formalize it as a public deed."

30. The Letter of Intent does not state that the entities

subsidiary defendants of Empresas Berríos have
consented to sign the lease agreement.

31. The Letter of Intent does not establish or mention guarantees

corporate by "Mueblerías Berríos" or the
corporations sued as subsidiaries of Companies
Berríos, nor that these would be tenants.

32. At the May 2005 meeting, Mr. Berríos

Castrodad did not argue with Mr. Raúl Rodríguez Lugo
the corporate framework of corporations
Berríos Furniture Stores because they were only agreeing on it
related to the sale and subsequent rental of the Center
Distribution. Mr. Berríos Castrodad did not believe

It is important to provide SLBD with information about the corporate scaffolding of corporations that

Berríos Furniture Stores make up the company.

33. On June 22, 2005, a contract entitled "Option to Purchase Agreement" (hereinafter, the "Option Contract") between FRG, represented by the Mr. Berríos in his capacity as managing partner of FRG, and CityWise, represented by its Chairman, Mr. Rodríguez Lugo, for the acquisition by CityWise of Distribution Center and its lease to FRG.
34. The Option Contract was drafted by Mr. Raúl Rodríguez Lugo, who used a draft prepared by his legal representative, Attorney Javier Feliciano.
35. FRG had no legal representation during the negotiation and signing of said contract.
36. Mr. Raúl Rodríguez Lugo assumed that FRG was the corporate name of Berríos Furniture Stores.
37. Mr. Raúl Rodríguez Lugo did not make any inquiries nor steps to understand the structure of furniture stores Berríos.
38. The Option Contract stipulated, among other things, that: (i) the seller was FRG; (ii) the price of The sale of the Distribution Center would be twenty-nine million dollars (\$29,000,000.00); (iii) FRG would give CityWise the option under consideration to the payment of one thousand dollars (\$1,000.00); (iv) the term of the The option would be 90 days from the signing of the contract; and (v) if the sale takes place, FRG

would transfer the Distribution Center free of encumbrances and taxes.

39. The Seller in the Option Contract is FRG,
as owner of the Distribution Center.

40. Clause FOUR, subsection (B), of the Contract of
Option provides that:

The SELLER [FRG] agrees to grant on or before closing, a Lease Agreement by which it will lease the PROPERTY, under terms and conditions consistent with the letter of agreement signed between the SELLER [FRG] AND THE BUYER [CityWise, Inc.], a copy of which is attached to this agreement as Exhibit B.

41. The Option Contract did not stipulate that the corporations sued as subsidiaries of Companies Berríos, agreed to be tenants, or guarantee, or otherwise sign the Lease Agreement.

42. The Option Contract, in its clause six, provides that:

This Purchase Option Agreement, its conditions and terms, as well as the rights and obligations arising from it, will be binding on the parties appearing, heirs, executors, successors and legal representatives, who would be obliged to the faithful fulfillment of the obligations and conditions agreed herein.

43. The appearing parties, according to the Contract of
The options were FRG and CityWise.

44. Clause SEVEN of the Option Contract states that
following:

No amendment, modification, termination, waiver, or tolerance of any of the provisions of this contract shall have any validity or legal effect unless expressly stated in

a written document signed by the appearing parties.

45. On September 20, 2005, CityWise and FRG

They signed an agreement where they amended the

Terms of the Option Agreement. Amendments

They consisted of: (1) extending the option until the 1st of

November 2005, and (2) replace CityWise with the

plaintiff, SLBD, as acquirer of the Center

Distribution.

46. After signing the Option Contract, at the request of

SLBD and by instructions from Mr. Berríos Castrodad, the

The administrative director of Empresas Berríos provided him

SLBD the identity and other corporate information

of the 88 subsidiary corporations sued.

47. Mr. Berríos Castrodad provided SLBD with the identity

and other corporate information from the 88

subsidiary corporations so that he would know where

The rent payment for the Center would be provided

Distribution.

48. Mr. Berríos Castrodad's intention was that FRG

out was the tenant of the Distribution Center.

49. After signing the Option Contract, it

They prepared several drafts of the contract

lease.

50. On June 16, 2005, Mr. Javier Feliciano, Esq.

SLBD's lawyer sent Mr. Florencio Berríos, the

first draft of the Lease Agreement ("the

First Draft").

51. The First Draft did not identify the lessor party nor

lessee.

52. The First Draft mentioned "Berríos Furniture Stores" in several clauses, but never referring to the same one as a tenant.
53. On August 19, 2005, Mr. Javier Feliciano, Esq. SLBD's lawyer sent Attorney Eduardo E. Franklin, FRG's lawyer, another draft of the Contract Lease (the "Second Draft").
54. The Second Draft did not identify the lessee.
55. The Second Draft mentioned "Berríos Furniture Stores" in several clauses, but never referring to the same one as a tenant.
56. On September 15, 2005, Mr. Feliciano, SLBD's lawyer sent Attorney Franklin another draft of the Lease Agreement (the "Third Draft").
57. In this Third Draft, SLBD included Companies Berríos, for the first time, as a tenant.
58. The Third Draft also included a clause and a *Warranty Agreement* for the defendant corporations, subsidiaries of Berríos Companies will guarantee the payment of the fees of lease, which was rejected by the legal representation of the Defendant.
59. On September 15, 2005, Mr. Feliciano told him sent the draft to FRG's legal representation *Guarantee Agreement* to the lease agreement that SLBD's potential lender, RG, was requiring as a condition for giving the financing of the purchase of the Distribution Center (the "Guarantee Agreement").

60. The Third Draft mentioned "Berríos Furniture Stores" in several clauses, but never referring to the same one as the lessee would be the guarantor.
61. On September 29, 2005, Mr. Feliciano, SLBD's lawyer sent Attorney Juan A. Aquino, FRG's lawyer, another draft of the Contract Lease (the "Fourth Draft").
62. In the Fourth Draft, SLBD added, for the first time, in Schedule A of the same, to corporations subsidiary defendants of Empresas Berríos as tenants.
63. The list of companies that SLBD added in the Fourth
The draft included the subsidiaries of Empresas Berríos that are dedicated to the retail sale of furniture and all the other subsidiaries that are dedicated to financing for the sale of said furniture.
64. Schedule A of the Lease Agreement
established the responsibility for the payment of rent by each entity, jointly and severally, and the percentage of responsibility corresponding to each of the corporations included.
65. The Fourth Draft further provided that in the possibility of new companies being formed for the operation of the Berríos Furniture business, These entities would have to join the lease as obligated parties.
66. The parties' lawyers exchanged multiple drafts of the lease agreement and none were accepted or signed.

67. All draft lease agreements

The terms exchanged by the parties included the clause of lease renewal option that establishes

what:

The initial term of this lease shall be fifteen (15) from the years Commencement ~~Period~~ ^{Dates} (as hereinafter defined), many days as may be necessary so that the initial term of this lease shall expire on the last day of calendar month. If Tenant is not then in default under the terms and conditions of this lease, Tenant may elect to extend the initial term for one (1) additional period of ten (10) years by giving written notice to Landlord at any time not later than one hundred eighty (180) days before the first day of the extension period. Reference in this lease to the "Term" shall be construed to mean the initial term of this lease and the extension period (if applicable), and the "end" of the Term shall mean the expiration or sooner termination of the Term.

68. Neither Berríos Companies, nor Mr. Berríos Castrodad, nor

the other subsidiary corporations of Companies

Berríos, reached a verbal or written agreement with the

plaintiff to include any of these

corporations as guarantors of the contract of

lease.

69. On August 25, 2005, RG sent him a letter

terms ("Term Sheet") to MR. Rodriguez Lugo

reiterating the need for them to be achieved

guarantees of all subsidiaries of Companies

Berríos as a condition of the loan. Said letter, to his

This time, it was signed by Mr. Rodríguez Lugo on the 31st

August 2005. According to the letter: "Lease

Agreement revision. Must have corporate guarantees

from the holding company and all of the subsidiary companies. Also, included termination provisions must provide for full debt repayment.”

70. By letter dated September 14, 2005, as

condition for granting financing for the

RG demanded that the purchase and sale of the Distribution Center

SLBD the following:

6. The Bank's legal counsel to revise the duly executed fifteen-year, non-cancelable lease agreement between borrower [SLBD] and Mueblerías Berríos (with recourse of all affiliated companies) for no less than \$2,600,000.00 (Triple Net) per year.

...

11. Certification from Mueblerías Berríos that this “sale & lease-back” transaction does not violate any credit covenant in the Loan Agreement with Citibank and/or any other financing agreement.

71. Furthermore, as RG indicated to SLBD in a letter dated the 5th

October 2005:

Moreover, we have assisted you by suggesting prudent terms and conditions of the Lease Agreement to be signed with Empresas Berríos, Inc. specifically in a meeting held in our offices on September 13, 2005 with Mr. Carlos Santiago Sarkis, Esq. and Mr. Javier Feliciano, Esq. At said meeting we reiterated the importance of cross corporate guarantees for your protection, as well as the Bank's. We

also provided flexibility to exchange this requirement for a limited personal guarantee of \$5,800.00 or a two-year lease contract guarantee from Mr.

Florencio Berríos.

72. RG, after negotiation and signing by FRG and SLBD

from the Option Contract, he demanded of Mr. Raúl Rodríguez

Lugo, who had to sign the contract of

Lease with Berríos Companies and with guarantees

of its subsidiary corporations, as a condition
to obtain an RG loan to buy the
Distribution Center.

73. In his letter of 5 October 2005, RG states that

the financing approved with the signing of the *commitment letter* of September 14th by all shareholders and guarantors of the loan requested from RG by SLBD.

74. After RG indicated to Mr. Raúl Lugo that he

They needed corporate guarantees from companies Berríos Companies subsidiaries for the loan,
He met with Mr. Berríos to try to reach an agreement regarding the lease agreement
In that way, by renegotiating the agreed terms already since June 22, 2005 in the Contract of Option to try to readjust the terms of said contract, to the new demands of RG.

75. The Option Contract does not state that the

subsidiary or affiliated corporations of Companies Berríos, nor FRG, the only part of it, nor Empresas
Neither Berríos, nor Mr. Berríos, would guarantee the contract of lease.

76. The plaintiff explored the possibility of

Financing with WesternBank. The granting of a loan from WesternBank to SLBD was conditional, among other conditions, on the lease solidarity of all entities related to FRG.

77. In 2005, SLBD did not have sufficient capital

to purchase the Distribution Center without obtaining bank financing.

78. WesternBank conditioned the granting of the contract on loan to SLBD [a] that included the subsidiary corporations of Empresas Berríos, oa Berríos Companies, or Mr. Berríos, as guarantors or joint lessees of the Contract Leasing, to all and any entities que se incorporasen en un futuro como subsidiarias de Berríos Companies.
79. On September 29, 2005, the legal representation of SLBD sent a letter to FRG's legal representation sending the Fourth Draft of the contract lease.
80. On the same day, September 29, 2005, Mr. Jorge Rodríguez Lugo, representing SLBD, exercised the option to purchase by letter addressed to Mr. Berríos. In that letter, Mr. Jorge Rodríguez Lugo indicated that He was ready to close the transaction.
81. However, as of that date, no agreement had yet been reached. lease agreement between the parties, nor even nor a deed of sale, nor It had financing ready to be disbursed.
82. After exercising the option, in the Fourth Draft SLBD It included, among other new things, the following: clauses and conditions that were not agreed upon in the Neither the Option Contract nor the Letter of Intent:
- (a) Removed "Empresas Berríos, Inc." as a lessee and established a list of lessees comprised of some subsidiary corporations of Empresas Berríos.

(b) He added that a contract amendment would be granted al lease if they were to create, in the future, any new corporation for the operation of the business

Berríos Furniture Stores to add these as tenants to the Contract Lease.

(c) He added that Empresas Berríos and certain subsidiaries of Empresas Berríos responsible for the payment of rent to SLBD in the proportions established in Schedule A

submitted.

(d) He added that the defendant subsidiaries of Empresas Berríos They would be jointly and severally liable for the lease agreement and the payments or obligations under it.

Específicamente, SLBD añadió el siguiente texto al borrador: "Any and all persons or entities listed in Schedule A hereto, as the same may be amended from time to time, shall be jointly and severally liable and responsible for all obligations of Tenant (monetary or otherwise) under this Lease."

Schedule A established the obligation to pay rent jointly among the eighty-eight (88) companies that were included in it.

(e) He added that each subsidiary defendant of Empresas Berríos would send SLBD its statements

financial reports every six months.

(f) He added that each subsidiary defendant of Empresas Berríos would guarantee to SLBD that the lease agreement does not violate any provision of any other contract with any financial entity.

83. In the transmittal letter for the Fourth Draft, dated the 29th

In September 2005, SLBD alluded to a meeting

held the day before, Wednesday, September 28

2005. Regarding the meeting of September 28

In 2005, the Plaintiff stated the following in his
paper:

The attached draft incorporates the comments on the draft contract circulated on September 22, 2005, as specifically agreed between Mr. Jorge Rodríguez and Mr. Berríos at the meeting held yesterday, Wednesday, September 28.

This meeting... was arranged specifically to discuss the inclusion of the corporations that make up the Berríos Furniture business.

as tenants in the referenced Lease Agreement.

84. In response to the fourth and final draft of the contract of lease and the letter sent on September 29 of 2005 by SLBD, on October 7, 2005, the FRG's legal representative, Attorney Aquino, indicated to the legal representation of SLBD, among other things, that: (a) he was sending his comments on the draft of the lease agreement as it had been This request was made in the letter of September 29, 2005; (b) Mr. Berríos had not agreed to put as guarantors to subsidiary corporations of Berríos Companies; and (c) the inclusion of the corporations sued as subsidiaries of Companies Berríos as joint tenants cannot exist has been the intention of the parties, since in all the previous drafts had not made any mention of said corporations and (d) clarified that Mr. Berríos He did not appear with lawyers at the meeting on the 28th September, because he had not been told that SLBD would be with his lawyer at that meeting.

The aforementioned letter was included as an attachment, along with a copy handwritten comments on the Fourth Draft.

85. From October to December 2005, the parties attempted reach an agreement by exploring different scenarios of business, unsuccessful.

86. By letter dated October 27, 2005, the SLBD's legal representation rejected the terms proposed by FRG in the letter of October 7 2005 and reaffirmed that it was ready to close.

87. Even though the option had already been exercised through the letter of September 29, on the 1st In November 2005, SLBD again applied for a extension of the term to acquire the Center of Distribution until December 1, 2005.

88. By letter dated November 3, 2005, the FRG's legal representation informed SLBD that it did not I had a problem with the requested extension subject to certain conditions.

89. On November 8, 2005, the new representation SLBD's legal representative, Attorney Juan M. Martínez Solís, sent a letter to FRG's legal representation in which He argued that his client was not satisfied with the offers. discussed.

90. On November 23, 2005, the parties met with their respective representatives present legal. However, regarding the proposed points An agreement was never reached.

91. FRG granted another extension for the closure of the transaction, due on December 23, 2005.

92. On December 22, 2005, by means of a letter sent by FRG's legal representation informed SLBD summary of what was discussed at the meeting on the 23rd November 2005. FRG informed SLBD that would not extend the deadline for closing again the property.

93. The parties never agreed to include the 88 subsidiary corporations sued as guarantors in the lease agreement.

II

A

As is well known, obligations arise from the law, from the contracts and quasi-contracts, and of the unlawful acts and omissions in which any kind of fault or negligence involved. Article 1042 of the Civil Code, 31 LPRA sec. 2992. Those obligations that They arise from a contract and have the force of law between the parties contracting parties, and must be fulfilled in accordance with it. Article 1044 of the Civil Code, 31 LPRA sec. 2994.

The requirements for every contract in our jurisdiction are the consent, object and cause. Article 1213 of the Civil Code, 31 LPRA sec. 3391. The existence or non-existence of these elements is It determines the moment the contract is perfected. According to the Article 1206 of the aforementioned legal body, the contract exists from the moment one or more persons consent to be bound to another or Others, to give something or provide some service. 31 LPRA sec. 3371. Because the principle of freedom of contract, "the contracting parties may establish the agreements, clauses and conditions that they deem appropriate, provided they are not contrary to the law, morality, or order

public.” Article 1207 of the Civil Code, 31 LPRA sec. 3372; *Unisys v. Ramallo Brothers*, 128 DPR 842, 850 (1991). In the field of the obligations and contracts, it is a fundamental doctrine that when the terms of a contract are clear, and leave no room for doubt about the intention of the contracting parties, one would adhere to the literal meaning of their clauses. Article 1233 of the Civil Code of Puerto Rico, 31 LPRA sec. 3471. That is, the terms of a contract are deemed clear “when they are clear enough on their own to be understood” in a single direction, without giving rise to doubts, controversies, or diversity of interpretations and without needing for its understanding arguments or demonstrations that are subject to challenge.” *S.L.G. Francis-Acevedo v. SIMED*, 176 DPR 372, 387 (2009).

Once the clauses and conditions of the agreement, the contract will be considered perfected by the consent between the parties and from that moment each of them will be obliged not only to comply with what is expressly stated agreed, but also with the consequences that, according to their nature, be in accordance with good faith, custom and the law. Article 1210 of the Civil Code, 31 LPRA sec. 3375; *Jarra Corp. v. Axis Corp.*, 155 DPR 764, 772 (2001). That obligation to comply with the agreement is based on the principle of good faith, which requires not to betray the trust that another has placed in a promise or conduct. *Unisys v. Ramallo Brothers*, supra. Contracts, plus beyond being an expression of the autonomy and freedom of the person, they are also instruments of distributive justice and social interest. The legal system provides legal protection to these obligations that arise from the will of their contracting parties, but require a cause that ensures transcendent social justice as a requirement for justifying their enforceability and state backing. That is why the

courts have the power to modify and intervene with the contracts whose irrational cause undermines contractual good faith.

BPPR v. Sucn. Talavera, 174 DPR 686 (2008).

For their part, the rules of contract interpretation outlined in the Civil Code are supplementary to the will of the contracting parties. If the parties specifically stipulate the terms of the legal relationship that they have created contractually, not It is possible to resort to rules of interpretation. Therefore, the general rule The interpretation of contracts is based on the principle that "if the The terms of a contract are clear and leave no doubt about the The intention of the contracting parties will be interpreted literally. clauses." Article 1233 of the Civil Code, 31 LPRA sec. 3471; *Rivera v. Rivera*, 168 DPR 193, 212 (2006); *Trinidad v. Chade*, 153 DPR 280, 289 (2001); *Marcial v. Tomé*, 144 DPR 522, 536 (1997). Those terms that are clear are considered to be those that are inherently... lucid enough to be understood in only one way, without giving leaving room for doubt or controversy, without the need for interpretations and without needing reasoning or demonstrations subject to challenge. *Sucn. Ramírez v. Superior Court*, 81 DPR 357, 361 (1959). In the absence of Ambiguity: the clauses of the contract bind the contracting parties. *Quiñones López v. Manzano Pozas*, 141 DPR 139, 156 (1996); *García Curbelo v. AFF*, 127 DPR 747, 760 (1991). Thus, if the The terms of a contract are clear, the interpretations that you reduce the effectiveness of valid contractual clauses agreed upon should be discarded. These considerations do not They exclude the interpretation of contracts, but rather grant a presumption in favor of their literal meaning. J. Ramón Vélez Torres, Course in Civil Law: Contract Law,

Inter-American University of Puerto Rico, San Juan, Puerto Rico,
2nd Ed.

On the other hand, in the case of bilateral obligations where both are obligated to each other for the same reason obligation, there is an implicit power to resolve obligations When one of the parties obligated fails to comply with the agreement. Art. 1077 of the Civil Code of Puerto Rico, 31 LPRA sec. 3052. In this case, The injured party may choose to demand specific compliance or resolution of the obligation. *Id.* Now, the breach has that refers to a principal reciprocal obligation, that is, the one that serves of cause for the other contracting party to also be bound. J. R. Vélez Torres, Course on Civil Law, *supra*.

B

The Civil Code of Puerto Rico lacks provisions that expressly regulate the option contract. However, Jurisprudentially, this has been defined as an “agreement by the which one party (called grantor, promisor, or opt-in) grants to the other (called the option holder), for a fixed time and in Under certain conditions, the power, which is left exclusively at their discretion, to decide regarding the conclusion of a contract principal”. *PDCM Assoc. v. Najul Bez*, 174 DPR 716, 724 (2008), citing *Mayagüez Hilton Corp. v. Betancourt*, 156 DPR 234, 246 (2002). The option contract gives rise to the option holder's right to decide, “at their discretion and within a certain period, whether to hold the contract chosen by the contract”. *PDCM Assoc. V. Najul Bez*, *supra*, p. 724. The above is because “[t]he option is tied to a definitive contract that the parties have previously defined,” as For example, a sales contract. *Id.* On the other hand, the

an option contract imposes on the grantor “the obligation not to frustrate the right enjoyed by the option holder.” *Id.*

The option right held by the option holder may remain extinguished by his resignation or by the expiration of the term of expiry established in the option contract without the option holder exercise the option. *Mayagüez Hilton, Corp v. Betancourt*, supra, p. 249. But it is also extinguished by its positive exercise, that is, by to exercise the right of option, which in turn perfects the Contract accepted. *ID.*

The Supreme Court of Puerto Rico has ruled as follows regarding the obligations of the option holder or grantor for the optant:

As the grantor is obligated not to do anything that could frustrate the effectiveness of the contract if the option holder exercises their right in a timely manner, they also cannot engage in voluntary, negligent, or fraudulent actions that could frustrate the option holder's expectation of exercising their right of option. If they do so, they would incur contractual liability, and the aggrieved option holder may bring an action for damages against the grantor who frustrated or prejudiced the exercise of the option. *Id.*, p. 250.

The Supreme Court has recognized that the principles general principles of obligations and contracts apply to option contracts. *Rosa Valentín v. Vázquez Lozada*, 103 DPR 796, 804 (1975). In Puerto Rico, the principle of freedom of expression prevails. contracting or autonomy of will, as set out in Art. 1207 of the Civil Code, which provides that “[t]he contracting parties may to establish the agreements, clauses and conditions that they have convenient, provided they are not contrary to the law or morality, nor public order.” 31 LPRA sec. 3372. Likewise, Art. 1044 of The Civil Code provides that the obligations arising from Contracts have the force of law between the contracting parties. 31 LPRA sec. 2994. The above provisions reflect the principle of *agreement*

sunt servanda in our jurisdiction, which is nothing other than the principle that the parties are obliged to comply with what has been agreed.

PRFS v. Promoexport, 184 DPR 42 (2012); *BPPR v. Sucn.*

Talavera, supra. Likewise, the parties are obligated to comply

not only with what was expressly agreed, but with all those

obligations that, according to their nature, are in accordance with good

faith, usage, and law. 31 LPRA sec. 3375. However, “the principle

Freedom of contract is not unrestricted and is subject to intervention

of the courts.” *Coop. Sabaneña v. Casiano Rivera*, 184 DPR

169, 174 (2011).

For a contract to be considered perfected, it must

The following requirements must be met: consent, object, and cause.

Art. 1213 of the Civil Code, 31 LPRA sec. 3391. Once

Once a contract is perfected, the scope of the obligations in it

The terms agreed upon will depend on the intention of the parties entering into the

contractual relationship. *Pepsi-Cola v. Mun. Cidra*, 186 DPR 713, 752

(2012); *VDE Corporation v. F & R Contractors*, 180 DPR 21, 35

(2010). When evaluating the terms of a contract, we must have

Please note the provisions of Article 1233 of the Civil Code, for the purposes of

that the terms of a contract are clear and leave no room for doubt

Regarding the intention of the parties, the literal meaning of their statements will prevail.

clauses. 31 LPRA sec. 3471. On the other hand, if the text of the contract

If it appears contrary to the intention of the parties, the following will prevail:

their intention takes precedence over the contractual text. *Id.* For their

For part, Article 1234 of the Civil Code provides that in order to judge the

the intention of the parties to a contract, “must be taken into account

primarily to their actions, both contemporaneous with and subsequent to

contract.” 31 LPRA sec. 3472. They must also be taken into

consideration “the acts and circumstances prior to the

granting of the contract that may indicate the will of the

"Contracting parties." *Pepsi-Cola v. Mun. de Cidra*, supra, p. 752.

c

However, the consent presented in the contracting

It may be void when it has been loaned by mistake, violence,

intimidation or fraud. *Colón v. Promo Motor Imports, Inc.*, 144 DPR

659 (1997).

Regarding intent, article 1221 indicates that "there is intent when with insidious words or machinations on the part of one of the

contracting parties, the other is induced to enter into a contract that, without

"They, I would not have done it," 31 LPRA sec. 3408. It constitutes intent,

Furthermore, to conceal an important circumstance regarding the object of the contract. *Bosques v. Echevarría*, 162 DPR 830 (2004); *Márquez v.*

Torres Campos, 111 DPR 854 (1982). Within the concept of

Insidious schemes include deception and fraud.

misrepresentation and undue influence, *Márquez v. Torres*

Campos, supra, p. 863; *Cruz v. Water Sources Authority*,

76 House of Representatives 312, 319-320 (1954).

Fraud is understood as a whole complex of underhanded tactics,

Contrary to honesty and suitable for deceiving good faith

belonging to others, generally for one's own benefit, in which it comes to

to summarize the state of mind of one who has not only wanted the

not only the act, but also the consequences he foresaw and intended.

unlawful acts that originate from it. *Columbus v. Promo Imports, Inc.*,

supra, p. 666; *Sanchez Rodriguez v. Lopez Jimenez*, 118 DPR

701, 708 (1987). Fraud in the performance of obligations is

the conscious and voluntary omission of the obligated party to comply with their

obligation knowing that one is performing an unjust act. It constitutes

fraudulently concealing the existence of a

important circumstance regarding the object of the agreement. *Forests v. Echevarría*, supra, p. 836. When analyzing the presence or absence of intent, the court must consider, among other things, the preparation and academic background of the victim, as well as their social status and economic and the relationships and type of business in which it is involved. *Colón v. Promo Motor Imports, Inc.*, supra.

Intentional misconduct is not presumed. The person alleging such conduct must establish it through evidence that satisfies the conscience of a judge, and not with mere conjecture. The one who invokes it must prove the intentional misconduct or bad faith of the person to whom it imputes, since good faith is presumed. *Citibank v. Dependable Ins. Co., Inc.*, 121 DPR 503 (1988). However, it does not mean necessarily that it has to be proven with mathematical certainty, but rather "[c]ould be established by inference or by evidence circumstantial." *Colón v. Promo Motors Imports, Inc.*, supra, p. 669. The seriousness of the intent is a matter of assessment resulting from the examination of all the circumstances of the case, *Columbus v. Promo Motors Imports, Inc.*, supra; *Canales v. Pan American*, 112 House 329, 340 (1982); *Miranda Soto v. Mena Eró*, 109 House 473, 478 (1980); *García López v. Méndez García*, 102 DPR 383, 386 (1974).

The concept of "intent by omission" was addressed in *SLG Ortiz-Alvarado v. Great American*, 182 DPR 48, 66-67 (2011) by the Supreme Court of Puerto Rico. It was emphasized there that it constitutes intentional fraud involves concealing an important circumstance regarding the object of the contract if that silence violates the good faith that is owed to the contractors.

D

It is an established rule that in the absence of error, prejudice or bias, the appellate courts will not intervene with the

determinations of facts, with the assessment of the evidence, nor with the award of credibility made by the Court of First Instance Instance. *González Hernández v. González Hernández*, 181 DPR 746, 776-777 (2011); *Ramírez Ferrer v. Conagra Foods PR*, 175 DPR 799, 811 (2009). This deference rests on the fact that the judge The person before whom the witnesses testify is the one who has the opportunity to see them and observe their way of speaking, to appreciate their gestures, hesitations, contradictions, and all his behavior while They declare; factors that gradually form in their consciousness the conviction regarding the truth of what was stated. *Suárez Cáceres v. State Elections Commission*, 176 DPR 31 (2009). Even in those cases in which conflicts arise between the evidence corresponds to the judge of the facts to resolve them. *Flores v. Community Property*, 146 DPR 45, 50 (1998).

Determinations of fact based on oral testimony

They will not be set aside unless they are clearly erroneous. Rule 42.2 of Civil Procedure, 32 LPRA App. V, R. 42.2. Only may intervene with these conclusions when the assessment of the The evidence does not represent the most rational, fair, and legal balance. of the entirety of the evidence. *González Hernández v. González Hernández*, supra. "Respect for the assessment of credibility of the primary forum considering that we only have Silent and expressionless records. *Ramírez Ferrer v. Conagra Foods PR*, supra.

After discussing the applicable law, we find ourselves in position to resolve.

III

Essentially, the main controversy in this case is whether Florencio Berríos, when negotiating and signing a contract with the appellants

The sale and leaseback option deceived them. made fraudulent representations, or led them to believe they were contracting with the entire popular corporate structure known as "Berríos Furniture Stores", which, according to the appellants, included each and every one of the furniture stores scattered throughout the island and bearing the name of Furniture Stores Berríos.

Having read the transcript of the oral test, we conclude that Mr. Berríos Castrodad entered into negotiations with SLBD Realty, Inc., with the intention of compelling FGR Special Society, corporation who owns and is in charge of the furniture warehouse that is the subject of the transaction. According to what he stated in his testimony, the FGR would be the obliged to pay the rent, and the money to satisfy said rent It would come from Empresas Berríos, Inc., just as it had been until that moment, and how it has continued ever since. present.

The complexity of this case lies in the fact that it is necessary to penetrate beyond the conduct and words of the parties, particularly from Florencio Berríos, when granting the Letter of Intent and then the Option Contract for the sale and lease business of your warehouse and distribution center.

The following exchange between Florencio Berríos and the SLBD Realty's lawyer, as well as your own lawyer, seems to us particularly clarifying what the appellee's intention was:

...

BY MR. VILLARRUBIA:

Mr. Berríos, let me move on to the next question, because – in response to questions from my colleague, and I continue in the same vein, in the same order that your lawyer asked you, you mention, and I quote, that with the sale of that building you wanted to get out of the responsibility you had of 23 million with the bank.

R. Correct.

Q. And to raise 6 million for their capital. Correct? I think that's been made clear here this morning, hasn't it? And the sale of that building was going to make that possible.

R. Yes.

Q. Those 23 million, that responsibility for those 23 million was FRG's. Correct?

R. Correct.

Q. Did FRG have anything to do with furniture stores?

R. The merchandise is stored there.

Q. Did the responsibility for those 23 million have anything to do with the furniture stores?

R. No.

Q. Right? Right? FRG was freed from those 23 million and that had nothing to do with the furniture stores? Right?

R. No.

Q. And in response to a question from my colleague, when we're talking about the list you gave the plaintiff of your corporations and furniture stores, you admit that's where the rental income came from. Is that correct?

R. That's right.

Q. And that rent money, that money that the furniture stores gave you, you say it came from the sales that the furniture stores made. Is that correct?

R. Um-jum.

P. So, that business, the "leaseback" in this business, that rent that was agreed for 15 years, that rental was going to continue coming from the sales of those furniture stores.

Correct?

R. As it has always been.

P. As it's always been, of course. And yet— I ask the same question again, did you still intend to do that business without forcing those furniture stores here?

R. Sure.

Q. Isn't that right?

R. Yes.

Q. Yet you say here in this court today that you find it illogical --

R. Sure.

P. --that the people who did that business with you required that when they structured those contracts that you say had to be structured, they include those furniture stores. Even so, you find that illogical, right?

R. Sure.

P. And not only does he find it illogical, but at the end of the day, when the plaintiff finds out that this is

So, this isn't Berríos Furniture Stores, which everyone knows; this is a framework, like the one you've described here, yet at the end of the day you refuse to include those furniture stores here. Isn't that right?

R. Absolutely.

P. However, you don't deny it and insist at the end of the day that whoever stayed here should be FRG, that it wouldn't have anything to do with those furniture stores. Correct, right? Correct?

HON. JUDGE TORRES: Can you answer, witness?

BY MR. VILLARRUBIA:

P. It has to be out loud, because otherwise it won't record.
That's right, isn't it?

R. Yes, but they had the option not to do the deal if it wasn't convenient for them.

P. Of course. But the deal you agreed to was a "sale and leaseback".

R. De FRG contra FRG.

P. Of course. FRG versus FRG. Very good. And not only that, but after that, in response to a question from a colleague, after the closure with Westernbank, you maintain that you tried to continue, to see if you could save the business. Is that correct?

R. Yes.

Q. And that's where, among the things you tried to include, you included an "exit clause." Right?

R. That was between the lawyers, yes.

Q. And through that "exit clause" you were going to sell the business - - sorry. FRG was going to sell the business, the distribution center, and you were going to be able to cancel your 23 million mortgage and have 6 million in your pocket.

Isn't that right?

R. Yes.

Q. And with those 15 years that were agreed upon with the plaintiff, you then intended to withdraw in two years. Is that correct?

R. Correct. But remember that - -

Q. Is it correct or not?

LCDO. PIETRANTONI: Your Honor, let me explain.

HON. JUDGE TORRES: Answer.

THE WITNESS: Remember I told you earlier that the idea of taking a year off was a conversation between lawyers. I would have arranged for it not to be that way.

Mr. Villarrubia: Your Honor, we have no further questions. That's all.

HON. JUDGE TORRES: Any further questions?

LCDO. PIETRANTONI: Yes, Your Honor.

RE-CONTRAIINTERROGATORIO

BY ATTORNEY PIETRANTONI:

Father Flor, do you still have the letter of intent?

R. Yes, I have it.

Q. Where does anything about financing appear in that?

A. Nowhere.

Q. And do you still have the option contract?

R. Yes.

Q. Where does anything about financing appear in that?

A. Nowhere.

Q. And who drafted both documents?

R. They.

P. Okay, thanks.

So, Berríos Furniture comes up in the letter, this issue of Berríos Furniture, and I think it's important that we explain. In the letter, when you signed the letters, who did you want to lease the distribution center back to you?

R. FRG.

Q. So why does Berríos Furniture appear there?

R. Well, that was the name they knew as an entity. And they were, well, sort of like, if the name I know is Coca-Cola, I'm doing business with Coca-Cola; it's going to say the name of whatever entity is Coca-Cola.

Q: And that's exactly what happened with the option contract?

R. Yes. Perhaps there was some confusion about that.

Q. Where did the confusion occur?

R. They believed that Berríos Furniture was the one selling and renting.

Q. In which document?

R. In the first letter that was made, which was later amended when we were looking for a way around it.

Q. Are you referring to the letter of intent?

R. Intention of - - yes.

Q. What date?

R. June 2, 2005.

Q. Is the option contract earlier or later?

R. After that. It was 20 days later.

Q. Why do you find it illogical - when did you learn, in relation to the option contract, of the plaintiff's financing?

R. About the financing?

Q. Was it before or after the option contract?

R. I know that they were arranging the financing. I know.

Q. Yes. But did you find out before or after the option contract?

R. This one? No, later.

Q. So why do you find it illogical that they, the plaintiffs, want, after signing the option contract, their corporations or some of them to be guarantors or tenants of the lease agreement?

R. How do I find out?

P. No. You told your colleague that you found that illogical.

R. Illogical, yes.

P. And I want you to explain to His Honor why you believe that was illogical.

R. Well, because if I'm selling the warehouse, which is FRG, I understand that for "leaseback" FRG is the one who has to lease it back to me, and that's how we structured it.

Q. Under the option letter or contract, did any of your corporations agree to be guarantors?

R. No, never. If that had been the case, we wouldn't have even started the business.

Q. Under any of the documents, were any of your corporations other than FRG obligated to be tenants?

R. No.

(Pages 169-177 transcript of December 8, 2014).

Moreover, within the framework of the negotiations relating to "sale and leaseback", on June 2, 2005, Mr. Raúl Rodríguez Lugo, representative of CityWise, Inc., who was later replaced SLBD sent a letter to Florencio Berríos. In the letter he He alluded to a certain meeting held on May 25, 2005, and in With reference to what had happened there, Mr. Berríos was informed Castrodad of CityWise's interest "in buying the property of reference for \$29,000,000." On June 8, 2005, Florencio Berríos signed that document.

On June 22, 2005, FRG Special Society, SE owner of the Distribution Center, and CityWise awarded a contract to option to purchase. Mr. Berríos Castrodad appeared in FRG's representation as the selling party and Mr. Rodriguez Lugo, representing CityWise, the buyer. In the The contract stated that FRG "is the full owner of the

real estate property [...] consisting of approximately 15 ropes, enhanced with a concrete industrial building rephosphorized [sic] used as a distribution center.” In turn, It arises from the contract that confirmed to CityWise the right exclusive to purchase the property for the price of \$29,000,000 subject to certain conditions. CityWise paid \$1,000 as option deposit. The option would have a term of 90 days from from the signing of the contract.

The option agreed upon in the contract was subject to certain conditions. First, FRG committed and was obligated to transfer registrable title to the property free of liens and encumbrances and CityWise committed and obligated itself to cancel at its own expense any mortgage or other encumbrance affecting the property.

Similarly, FRG undertook to grant on or before closing a lease agreement “under the terms and conditions consistent with the letter of agreement signed between the PARTY

SELLER AND THE BUYER, a copy of which is attached to this contract as Annex B. “It was agreed that if for any The reason FRG did not meet the aforementioned conditions, CityWise may “(1) resolve this transaction and terminate the Option or (ii) demand the specific fulfillment of the obligations contained herein.”

It was established that the closure would take place on site. designated by CityWise “on or before ninety days from the signing of this contract.” It was also agreed that the contract of This option would be mandatory “for the appearing parties, their heirs, executors, successors and legal representatives, who They will be bound to the faithful fulfillment of their obligations and conditions agreed herein.”

On September 20, 2005, Mr. Raúl Rodríguez Lugo He sent a letter to Mr. Berríos Castrodad with the purpose of confirm the agreement between both parties "to amend the option signed between CityWise, Inc., and FRG on June 22, 2005 to reflect that the term of said option was extended and that will expire on November 1, 2005, and clarify that the property will be acquired by SLBD Realty, Inc." The letter was received and signed by Mr. Berríos Castrodad.

After this, SLBD had difficulties in achieving the financing, and it was the bank that demanded additional guarantees, never considered by Florencio Berríos Castrodad in the business:

BY MR. VILLARRUBIA:

P. Of course, with pleasure.

In the same way as I asked the previous question, the question now is whether at any time the plaintiff, Mr. Raúl Rodríguez or Jorge Rodríguez, contacted you to discuss with you the possibility that the furniture stores, the corporations that make up the furniture stores, were appearing in the lease agreement.

R. That was over the phone, I think, they asked me if that was possible. The answer was no.

Q. And the answer was no. Why was the answer no, Mr. Florencio Berríos?

R. After that meeting, which they say they called me to because they already had the money secured, the financing approved by the bank, I went —and at one point they told me I hadn't shown up for a closing. I had never been invited to a closing with the bank.

Then, with the second bank, Westernbank, they summoned me for a closing. It wasn't really a closing, because there was no bank present. They simply brought some written guarantees they had prepared, which committed me personally, the Berríos corporations, and all that, so that I would sign the document. And the document was a document that the bank was demanding from them as a condition for approving the financing, which they claimed they were approving but without those requirements.

When they realized it, they were asking for my personal guarantee and so on, so that I would guarantee the loan. I said, "Well, if that were the case, then

I'll make the loan myself; I don't have to sell the warehouse."

P. So you're telling us that you did discuss the possibility of the furniture stores being tenants with them, with the plaintiffs.

R. But the answer was no. They proposed. They told me

(Pages 63-64 Transcript of December 8, 2014).

Florencio Berríos candidly explained what it consisted of business that he proposed to carry out with SLBD:

Q. And according to you, what you're telling us here is that FRG, according to you, was the one who was going to rent the building to the plaintiffs.

R. Exactly – FRG was going to pay the plaintiffs' rent.

Q. Tell me if it is correct or not that the one who was going to pay the rent to the plaintiffs was Empresas Berríos.

R. Empresas Berríos was going to pay us.

Q. Who are "we"?

R. A FRG, as if it were a sublease, from where the funds to pay them would come.

Q. Tell me if it is correct or not that you also did not explain that to the plaintiffs.

R. I didn't have to explain it, because the important thing here was that they were going to receive a monthly check for the rent.

(Pages 71-72 Transcript)

For his part, Mr. Jorge Rodríguez Lugo, on the side

The appellant testified that in the process he called "due diligence",

After signing the option contract with FRG, they learned of

that FRG was a separate corporation from Mueblerías Berríos, whose

Her sole function was to own the building they were interested in.

buy. He declared: "That deal can't be done. I don't do it."

Never again. I'm not going to give \$29 million to a

a corporation that has no business and no capacity to

repay it." (p. 27, transcript of December 10, 2014)

Regarding their freedom to exercise or not the purchase option,

he declared:

R. So, it's natural that one signs the option and goes in to do the "due diligence", because if it's not convenient for me, I don't exercise it.

P. Very good.

R. But if I can set up the business as I expect and they can close as they promised, then - which includes repayment capacity, obviously, figure out how the scaffolding works.

Q. That's my next question. What does due diligence include?

R. Find out what the repayment capacity is, who exactly will appear in the lease agreement, and establish that those who appear in the lease agreement will be there for the 15 years.

It is central to this controversy to note that, after the fact "due diligence" by Mr. Jorge Rodríguez Lugo, of SLBD, He learned what the corporate structure of furniture stores was like. Berríos confirmed that the corporation that was offering Florencio Berríos to enter into the "sale and leaseback" contract It was FRG. He also learned that FRG was the sole owner of the warehouse and distribution center. In addition, Berríos' lawyers They clarified that the other corporations would not be present at the signing. of the "sale and leaseback" contract. Despite knowing everything Previously, on September 29, 2005, the appellee exercised the Option: sending a communication to Florencio Berríos. Already for On that date, SLBD knew that the offer, as it had been The proposal put forward by Mr. Berríos was not in his best interest. That was the moment. to inform them that they would not exercise their option. Instead, they tried to sign a contract under fully guaranteed conditions and guarantees different from those proposed by Florencio Berríos Castrodad in the option contract.

As a second point of error, the appellant SLBD It alleges that the sentencing forum excluded Annex 8 from a report of appraisal, report that was admitted as evidence as exhibit 2

from the appellant's side. Annex 8 was excluded because it was considered the court as a reference evidence. Let's see.

The appraisal report was admitted during the testimony of the appraiser, under the provisions of Rule 805(F) of the Rules of Evidence¹. This report provided information about the entities or tenant parties. However, when the appraiser was questioned Regarding Annex 8 of that report, which consists of a "Credit Rating Report," there was an objection based on the fact that the report had not been prepared, and the court declared the document inadmissible.

According to the appellant, the importance of Annex 8 not admitted, is that, upon accessing that credit report, the information from Empresas Berríos, Inc., emerges united with Mueblerías Berríos, Inc., and refers to the 89 corporations as Furniture Stores Berríos, without distinction between each of them, and that all the shares in these corporations belong to Florencio Berríos.

This corporate framework has already been discussed as part of the first error noted. We concluded there that Florencio Berríos offered, in the "sale and leaseback" option contract, solely to the FGR Special Society corporation, as owner and salesperson at the storage and distribution center, and that this was clear even before SLBD chose to exercise the option offered. Therefore, the admissibility or non-admissibility of Annex 8 does not modify our determination that in this case there was no fraud in contracting. It is not necessary to award the second contract error reporting.

After a thorough study of the entirety of the transcription of the oral evidence and the documents contained in the appeals file, we agree with the forum's assessment.

¹ Rule 805, 32 LPRA App. VI, R. 805, establishes the exceptions to the Rule of Reference Test.

appealed, in the sense that Florencio Berríos Castrodad is not responsible for the intentional conduct imputed to him in the demand.

Therefore, having read the transcript and considered the whole From the test, we conclude that each and every one of the determinations of fact and law formulated by the Court

The decisions of the Court of First Instance are supported by the evidence. It was appropriate to dismissal of the claim.

IV

For the reasons discussed , **we CONFIRM** the Judgment appealed.

The Court so agreed and ordered, and the Secretary of the Court certified it. Court of Appeals.

DIMARIE ALICEA LOZADA
Secretary of the Court of Appeals