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Transamerica Leasing, Inc. v. La Republica de Venezuela 200 F.3d 843 (D.C. Cir., 2000)

Twelve companies (the “plaintiffs”) that leased equipment to a now defunct international shipping company owned and operated by the Republic of Venezuela filed a suit alleging that the Venezuelan government was both derivatively and directly liable for the company’s breach of contract. Venezuela argued that it was immune from suit under the Foreign Sovereign Immunities Act (“FSIA”). Under the FSIA a “foreign state [is] immune from the jurisdiction of the courts of the United States and of the States,” subject to certain enumerated exceptions.

The plaintiffs relied on the “commercial activity” exception, which generally provides that a foreign state is not immune if the action is based upon a commercial activity, or an act performed in connection with such activity, carried on in, or effecting, the United States by the foreign state. Venezuela argued that it did not “carry on” the commercial activity because the company was not an agent of the Venezuelan government. A “government instrumentality established as a juridical entity distinct from its sovereign” is presumed to have a separate legal status. The presumption can be overcome where an actual or apparent agency relationship has been established or where fraud or injustice would result.



The court concluded that the Venezuelan government did not exercise the requisite "actual or apparent" control over the company. Additionally, the court rejected the plaintiffs' claim that the government's failure to provide the company with adequate financial resources to perform its contracts amounted to fraud or injustice. Therefore, the court held that the Venezuelan government was immune under the FSIA from being held *derivatively* liable for the company's breach of contract. Because the lower court originally failed to address the issue, the Appellate Court remanded the case for the lower court to consider whether Venezuela could be held *directly* liable under the FSIA for having caused the company to breach its contracts with the plaintiffs.

Marks & Weinberg, PC is a law firm with significant experience in dealing with virtually every type of equipment and facility lease financing. The lawyers of the firm have participated in leasing financings for more than a billion dollars of equipment and are recognized throughout the industry. If you would like more cases or articles on leasing, or have any questions or comments about this Article or other leasing issues, please visit leaselawyer.com or contact Barry Marks at 205.251.8303 or Ken Weinberg at 205.251.8307.

