

**Caballero v Fuerzas Armadas Revolucionarias De
Colombia**

2021 NY Slip Op 30459(U)

February 18, 2021

Supreme Court, New York County

Docket Number: 154864/2020

Judge: Richard G. Latin

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. RICHARD G. LATIN PART IAS MOTION 46

Justice

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INDEX NO. 154864/2020

ANTONIO CABALLERO,

MOTION DATE 02/16/2021

Plaintiff,

MOTION SEQ. NO. 010

- v -

FUERZAS ARMADAS REVOLUCIONARIAS DE COLOMBIA, A/K/A FARC-EP A/K/A REVOLUTIONARY ARMED FORCES OF COLOMBIA;, THE NORTE DE VALLE CARTEL,

DECISION + ORDER + JUDGMENT

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 010) 84, 85, 86, 87, 88, 89, 90, 101, 102

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, it is ordered that plaintiff's motion for leave to renew and reargue his prior motion to declare that Julio Cesar Alvarez Montelongo and Rafael Marquez, and their owned entities are agencies or instrumentalities of Fuerzas Armadas Revolucionarias De Colombia ("FARC"), and that their assets are blocked assets under the Terrorism Risk Insurance Act of 2002 ("TRIA") (codified at 28 U.S.C. § 1610) and executable towards the satisfaction of a judgment, is determined as follows:

Plaintiff commenced this action for post-judgment executions on the blocked assets of non-parties to satisfy a judgment awarded by the United States District Court for the Southern District of Florida on May 20, 2020 in favor of plaintiff Caballero against FARC and the Norte De Valle Cartel ("NDVC"). The judgment awarded plaintiff damages under the Anti-Terrorism Act

(“ATA”) (codified at 18 U.S.C. § 2333) in the amount of \$45,000,000.00 in actual compensatory non-economic damages; \$1,729,667.00 in actual compensatory economic damages; and post-judgment interest at 0.15% per annum for the defendants kidnapping, torture, and killing of plaintiff’s father in order to facilitate the international trafficking and distribution of illicit drugs. This judgment was later domesticated in the state of New York by the Erie County Clerk.

By motion filed July 13, 2020, plaintiff initially sought a declaration that Mexican musician, Julio Cesar Alvarez Montelongo, and Mexican soccer player, Rafael Marquez, are agencies or instrumentalities of FARC. By order dated December 4, 2020, Justice Billings denied plaintiff’s motion for declaratory judgment finding that, at best, the evidence that was presented may have linked Montelongo and Marquez to the Flores Drug Trafficking Organization that has a strategic alliance with the leaders of the Sinaloa Cartel, who were found to be an agency or instrumentality of FARC. However, in her decision, Justice Billings specifically stated that the denial was without prejudice to a future motion by plaintiff presenting further evidence. Plaintiff now seeks to renew and reargue its prior motion pursuant to CPLR 2221(d) and (e).

A motion for leave to renew “shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination” (CPLR 2221[e][2]). “This rule is not totally inflexible, and a court has discretion to grant renewal even upon facts known to the movant at the time of the original motion” (*Pinto v Pinto*, 120 AD2d 337, 338 [1st Dept 1986]). Additionally, a motion to renew is appropriate where the court implicitly or explicitly invites renewal (*see UBAF Arab American Bank v Sanchez*, 169 AD2d 623, 625 [1st Dept 1991]).

In support of the motion, plaintiff submits, *inter alia*, the supplemental affidavit of John Robert McBrien, former Associate Director for Global Targeting in the Office of Foreign Assets Control of the U.S. Department of Treasury that is based on new research. In addition, plaintiff includes three recent decisions issued in plaintiff's companion actions by the Court of Common Pleas for the Fifth Judicial Circuit in South Carolina, the United States District Court for the Western District of New York, and the United States District Court for the Central District of California, all issued after the initial motion was made, which either explain the analysis for how one is found to be an "agency or instrumentality" and/or determine that Montelongo is an agency or instrumentality of FARC and that his assets are blocked assets that are executable under TRIA towards the satisfaction of an ATA judgment.

With respect to Montelongo, McBrien states that the Office of Foreign Assets Control ("OFAC") lists him on the Specially Designated Nationals and Blocked Persons List ("SDN") as a linked associate of the Flores DTO. He opines that the Flores DTO are allies with the Cartel Jalisco Nueva Generacion ("CJNG") and Los Cuinis Drug Trafficking Organization who are all distributors of FARC cocaine. He further opines that as distributors, all three organizations provide "material assistance" to the international narcotics trafficking of FARC cocaine, and are thus, agents and instruments of FARC. Specifically, McBrien maintains that Montelongo's revenue from concerts are comingled with narcotics proceeds and provide the requisite ingredient for laundering of proceeds from the distribution of FARC cocaine.

Similarly, Marquez is listed on the OFAC's SDN as linked to the Flores DTO. It is reported that his ties to Flores go back at least 20 years. McBrien opines that as a longstanding "front man"

for the Flores DTO, that he serves an important function for a group which distributes FARC cocaine in Mexico.


Based on all the source material annexed to McBrien's affidavit and based on his knowledge and understanding of the operation of FARC and its agents and instrumentalities, it is his opinion that Montelongo and Marquez are each an agent and instrumentality of FARC.

It is settled that an agency or instrumentality for the purposes of the TRIA is any person who "(1) was a means through which a material function of the terrorist party is accomplished, (2) provided material services to, on behalf of, or in support of the terrorist party, or (3) was owned, controlled, or directed by the terrorist party" (*Kirschenbaum v 650 Fifth Avenue and Related Properties*, 830 F.3d 107, 135 [2d Cir. 2016], *abrogated on other grounds by Rubin v Islamic Republic of Iran*, 138 S.Ct. 816 [2018]; *see also Stansell v Revolutionary Armed Forces of Colombia*, 771 F.3d 713 [11th Cir. 2014]). Due to the shadowy nature of terrorist groups, agency can be found even where there has not previously been a direct link and demonstrated by evidence that is indirect (*see Stansell*, 771 F.3d at 732, 739, 742). Based on McBrien's supplemental affidavit and its supporting documentation, it is evident that Montelongo and Marquez, as the front men for the money laundering of proceeds linked to FARC cocaine, "provided material services to, on behalf of, or in support of [FARC]" (*id.*). Further, both Montelongo and Marquez are blocked assets as designated by OFAC.

Accordingly, it is ordered that the motion by plaintiff for leave to renew and reargue its prior motion to declare Julio Cesar Alvarez Montelongo and Rafael Marquez as agencies or instrumentalities of FARC is granted to the extent that it is

ORDERED and ADJUDGED that, upon renewal, Julio Cesar Alvarez Montelongo and Rafael Marquez are each declared agencies or instrumentalities of FARC.

This constitutes the decision and judgment of the Court.

<u>2/18/2021</u> DATE					 RICHARD G. LATIN, J.S.C. signed pursuant to CPLR 9002
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				REFERENCE	