

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

CENTRO DE PERIODISMO INVESTIGATIVO

Plaintiff

v.

**FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO**

Defendant

Civ. No. 17-1743 JAG

**MOTION BY CPI FOR EXPEDITED DECISION
and RENEWING ITS REQUEST FOR AN IMMEDIATE HEARING**

TO THE HONORABLE COURT:

NOW COMES THE CENTRO DE PERIODISMO INVESTIGATIVO, INC. (“the CPI”), through undersigned counsel, and respectfully requests this court for a prompt ruling on the pending Motion to Dismiss. The CPI also respectfully renews its request for an immediate hearing on this case, first made in August of last year.

It is respectfully submitted that it is time for this court to act upon the dispositive motion. The events of the last year, including but not limited to the glaring absence of accurate information provided to the citizens following the recent hurricanes, have demonstrated beyond any doubt the need for transparency in government. The instant case is a key link in the overall effort by the people of Puerto Rico to gain access to the financial decisions which affect their lives on a daily basis and will continue to do so well into the future.

In support of this motion, plaintiff CPI requests this court to consider the following facts and contentions:

1. This action was filed eight months ago, on June 1, 2017. At stake is the right of the Centro de Periodismo (“CPI”) to secure access to documents which by law and regulation is in the possession of the defendant Financial Oversight and Management Board for Puerto Rico (“the Board”).

2. CPI request for access is in furtherance of its role in investigating matters of critical importance to the people of Puerto Rico and to advance transparency in government, so that informed choices can be made by the citizenry.

3. The firsts few months of this litigation, before the two hurricanes ravaged Puerto Rico in September, were taken up by requests by the Board for extensions of time and to have the matter stayed and/or heard in the Title III case presided over by Judge Laura Taylor Swain. *See, eg. Dkt Nos. 5, 8, 9, 10, 11, 1, 13, 14, 15, and 18* in the current case, and *Dkt Nos 740, 745, 959, 1083 and 1084*, in the Title III case, *No. 17 BK 3283 -LTS*.

4. On Friday, August 18, 2017, Judge Swain granted CPI’s request for relief from the Title III automatic stay, finding cause to do so, while observing that the instant case “would completely resolve the CPI’s litigation,” and that the Board’s “objections to the lifting of the stay primarily implicate merits issues” *Docket No. 1084, in Case No. 17 BK 3283 -LTS, at pages 2-3*. Judge Swain also observed as follows:

Although the [Board] will be required to expend time and resources defending the Litigation, the most significant effect of continuing the stay of the Litigation would be to deprive the CPI of any opportunity to obtain timely determinations as to its entitlement to the disclosure it seeks on behalf of the Puerto Rican public. Accordingly the balance of harms tips decidedly in favor of the Movant. *Docket 1084 in Case No. 17-03283-LTS, at page 3 (emphasis supplied)*.

5. On Monday, August 21, 2017, the CPI moved this court to order the Board to answer the Complaint or otherwise respond by a date certain. The CPI also requested an

“Immediate Hearing.” *Docket No. 19*.

6. On the following day, August 22, 2017, the Board opposed these requests, asking for more time to respond to a complaint which had been served on it almost three months earlier. The Board also contended that it was “premature” to address the need for a hearing, it intended to present a motion to dismiss the complaint. *Dkt No. 20*.

7. This court allowed the Board until August 29, 2017, to answer or present its Motion to Dismiss. This court also reserved decision on the sought-after hearing, stating that it would “evaluate the need for a hearing after the Board’s Response.” *Dkt No. 21*.

8. On August 29, 2017, the Board presented its Motion to Dismiss. *Docket No. 22*. CPI responded on September 18, 2017 (following Hurricane Irma). *Docket No. 25*.

9. On October 16, 2017, an *amicus* brief in favor of the relief requested by the CPI was presented to this court by the prestigious Reporters Committee for the Freedom of the Press, an organization which has been defending press freedom since its founding in 1970, pursuant to its mission “[t]o protect the right to gather and distribute news; to keep government accountable by ensuring access to public records, meetings and courtrooms; and to preserve the principles of free speech and unfettered press, as guaranteed by the First Amendment of the U.S. Constitution.”¹

10. On October 30, 2017, the Board filed a reply addressing both CPI’s Opposition to the Motion to Dismiss and the *amicus* brief presented by the Reporters Committee.

11. Since issue has been closed on the Motion to Dismiss for 100 days, it is respectfully submitted that it is time for a decision on the dispositive motion and for this

¹This Mission Statement is on the Committee’s website, at <https://www.rcfp.org>.

court to hold the hearing requested by the CPI.²

12. The critical role CPI plays in assuring citizen access to information has come into sharp focus in recent months, a period when the nefarious effects of the lack of government transparency have been painfully obvious. In this post-hurricane period, the people of Puerto Rico have been frustrated not only by the lack of information, but also by mis-information provided by governmental authorities, whether it relates to the number of deaths caused by the storms, the projections about renewal of essential services, the amount of federal aid to be expected, the extent of out-migration, the liquidity of the government, or the contracting of private entities to assist in recovery and rebuilding efforts.

13. Investigations by CPI during this period have led to significant reporting by major news outlets in Puerto Rico and in the United States, including such venerable entities as the BBC, Washington Post, the New York Times, Telemundo and Univisión.

14. The current juncture is a critical one. Some two weeks ago, the Government of Puerto Rico submitted its current Fiscal Plan to the Board for approval. Earlier this week, the Board rejected the Plan, which is due for re-submission in the next five days.

15. Although the Government of Puerto Rico has provided more information this year regarding its proposed Fiscal Plan than it did in the past, the Board continues to keep information from the people over whose lives it exercises authority. In the absence of a

² Undersigned counsel is well aware of the difficulties experienced in Puerto Rico in the aftermath of the hurricanes and the logistical problems experienced by the court. It was not until less than three weeks ago that the undersigned attorney Berkan finally got electrical power back in her office and was really able to renew her work consistently. Nonetheless, it is submitted that this matter is ripe for decision.

decision in this case, the Board continues to prevent CPI from accessing information such as the monthly reports it receives from the government of Puerto Rico on revenues, payroll and federal funds, and quarterly reports on key economic, financial, social and labor statistics. To this day, the CPI has had no access to minutes of the closed-door meetings of the Junta and its committees, or to complete financial disclosure forms for Junta members, both before and after their appointments to the Board.

16. When the CPI filed its request for a hearing five months ago, it observed that “[t]he purpose of Puerto Rico’s doctrine requiring access to documents in government files is to assure that citizens are adequately informed as to the workings of government. “ The CPI went on to observe that “[i]n these difficult times, the citizens of Puerto Rico are facing ... wrenching decisions about their future (eg: whether to remain here or move elsewhere; how to structure their retirements in light of pension reductions; whether they can hope to send their children to the university)” and further contended that such access was necessary so that they could “make informed decisions about the matters affecting their lives significantly and which are crucial with respect to the future of Puerto Rico.”

Dkt No. 19, page 5.

17. The events of recent months have demonstrated not only the stark truth of these assertions, but also the prophetic nature of these words. Now, more than ever, the citizens of Puerto Rico need transparency in the operation of the government, including the PROMESA Board, which exercises plenary power over the citizens of Puerto Rico, but which is not even subject to the democratic processes faced by elected officials.

16. As Thomas Jefferson observed over 200 years ago, “[a]n informed citizenry is at the heart of a dynamic democracy.” “Whenever the people are well informed, they can

be trusted with their own government; that whenever things get so far wrong as to attract their notice, they may be relied on to set them to rights.” The CPI is asking for no less.

CONCLUSION

In August of last year, after two and a half months of preliminary skirmishes provoked by the Board’s initial filings, CPI requested that the PROMESA Board be required to answer the complaint immediately and that a hearing be scheduled. The Board responded by stating that it would be presenting a Motion to Dismiss, and this court stated that it would consider the hearing request after the dispositive motion was filed.

It is now almost six months since Judge Swain lifted the stay, based on her observation that to do otherwise would “deprive the CPI of any opportunity to obtain timely determinations as to its entitled to the disclosure it seeks on behalf of the Puerto Rican public.” Although the Board has not prevailed on its “jurisdictional” arguments (that CPI has no judicial forum in which it may assert the constitutional rights in play in this case); although it has not yet even formally presented its “merits” arguments (which can be anticipated to be essentially the same as those included in the Motion to Dismiss), the Board nonetheless continues to engage in the unconstitutional conduct which forced the filing of this lawsuit.

Without a decision on the Motion to Dismiss, and without a hearing, the Board continues to prohibit access to the document. Unfortunately, **every day that this court waits is one more day when the Board is winning in this case.** The rights asserted by the CPI are too important to be decided, in effect, by default, at a time when

they no longer can contribute to the democratic processes so urgently needed in Puerto Rico.

WHEREFORE, the CPI respectfully requests a prompt decision on the Motion to Dismiss, renews its requests that the same be denied and that a hearing be held at the earliest possible date.³

Respectfully submitted in San Juan, Puerto Rico this 7th day of February, 2018.

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CERTIFICATION: This is to certify that this motion is being submitted through the ECF filing system, which will automatically notify all counsel of record.

/s/ JUDITH BERKAN

³Undersigned attorney Berkan will be away from Puerto Rico, at a professional conference, for five days later this month. Accordingly, it is requested that the hearing be either before February 15th or after February 20th.