

1981

# Assignments-Counterclaims-Act of State (Empresa Cubana Exportadora De Azucar Y Sus Derivados v. Lamborn & Co.)

Follow this and additional works at: [https://digitalcommons.nyls.edu/journal\\_of\\_international\\_and\\_comparative\\_law](https://digitalcommons.nyls.edu/journal_of_international_and_comparative_law)

Part of the [Law Commons](#)

## Recommended Citation

(1981) "Assignments-Counterclaims-Act of State (Empresa Cubana Exportadora De Azucar Y Sus Derivados v. Lamborn & Co.)," *NYLS Journal of International and Comparative Law*: Vol. 2 : Iss. 3 , Article 9.  
Available at: [https://digitalcommons.nyls.edu/journal\\_of\\_international\\_and\\_comparative\\_law/vol2/iss3/9](https://digitalcommons.nyls.edu/journal_of_international_and_comparative_law/vol2/iss3/9)

This Recent Developments is brought to you for free and open access by DigitalCommons@NYLS. It has been accepted for inclusion in NYLS Journal of International and Comparative Law by an authorized editor of DigitalCommons@NYLS.

the procedural safeguards<sup>4</sup> accorded to those aliens subject to the deportation authority of the Attorney General.

The court of appeals affirmed the district court's decision. On the issue of the Secretary's authority, Judge Hatchett noted: "Congress has entrusted *deportation* to a different department of government, the Attorney General . . . [but] [w]e accept the argument of the government that § 1201(i) means exactly what it says: the Secretary may revoke an alien's visa 'at any time'. . . even after he has entered our country."<sup>5</sup>

The court next considered whether the revocation of Knoetze's visa complied with due process rights guaranteed by the Constitution. Knoetze had argued that by denying him a working visa, the government effectively denied him the ability to remain in this country. The court held that fifth amendment protection attaches only when the government sues to deny a liberty or property interest and "revocation of an entry visa issued to an alien already within our country has no effect upon the alien's liberty or property interests."<sup>6</sup>

ASSIGNMENTS — COUNTERCLAIMS — ACT OF STATE — *Empresa Cubana Exportadora De Azucar Y Sus Derivados v. Lamborn & Co.*, 652 F.2d 231 (2d Cir. 1981).

The Republic of Cuba filed a contract action in the Southern District of New York against Lamborn & Company, Inc., a Delaware corporation and the assignee of Craig, a New York partnership with offices in New York and Havana. Cuba alleged that Lamborn, as assignee, failed to make payment on a contract to purchase sugar from Banco Cubano del Comercio Exterior, an independent juridical entity wholly owned by the Cuban state. The Republic of Cuba was permitted by the district court to amend its complaint so as to substitute Empresa Cubana Exportadora de Azucar y Sus Derivados (Cubazucar) as plaintiff.<sup>1</sup> In response to this amendment, Lamborn asserted a counterclaim against Cubazucar and a third party claim against the original

---

4. *Id.* § 1252(b).

5. *Knoetze v. United States*, 634 F.2d 207, 210, 212 (2d Cir. 1981) (emphasis added).

6. *Id.* at 212.

---

1. *Republic of Cuba v. Lamborn & Co.*, No. 61 Civ. 1847 - CLB (S.D.N.Y. Nov. 1, 1979).

plaintiff contending that when Craig assigned its claim, it also assigned the right to assert any defenses that Craig might have against the Cuban government or its instrumentalities. Therefore, Lamborn claimed that when Cuba seized Craig's Havana bank account, such seizure amounted to payment of Lamborn's assigned debt, or partial payment. The district court ruled in favor of Cubazucar and dismissed Lamborn's counterclaim and third party claim.<sup>3</sup> In its decision, the district court refused to permit the defendant to advance assigned claims of its principal, Lamborn Craig and Company, holding that a party should not be allowed to assert a defense originally belonging to a third party and acquired in anticipation of litigation. Moreover, New York law<sup>4</sup> prohibited such an assignment.

On appeal, the Second Circuit affirmed the district court's decision, but on different grounds. It held that the case relied upon by the lower court, *Banco Nacional de Cuba v. Chase Manhattan Bank*,<sup>4</sup> was distinguishable. In the present case, Lamborn was acting as an agent, and the plaintiff's claim had arisen from the principal's contract with the plaintiff. This direct relationship between the parties was absent in *Chase*, and was, therefore, not controlling in the present action.

The court further stated that the lower court's application of New York law was incorrect. The statute's purpose was to outlaw assignments where both parties were not involved in the subject transaction. In the instant case, Lamborn as assignee, and Craig as assignor, were interrelated corporations, and plaintiff was involved with the contract from its inception.

Turning to the merits, the court held that the Cuban seizure of Craig's assets did not constitute payment of the debt in the absence of proof of an intent to have the seizure satisfy Lamborn's obligation. The court fully examined the act of state doctrine and applied *Banco Nacional de Cuba v. Sabbatino*<sup>5</sup> for the proposition that courts would not examine the validity of property seizures made abroad by foreign governments, even when the sovereign appears as a plaintiff.

After examining the exceptions to the doctrine, the court found them inapplicable. There was no treaty or agreement providing for a remedy. The Hickenlooper Amendment only applies to confiscations

---

2. *Empresa Cubana Exportadora de Azucar y Sus Derivados v. Lamborn & Co.*, No. 61 Civ. 1847 - CLB (S.D.N.Y. July 31, 1980).

3. *N.Y. Jud. Law* §§ 489, 495 (McKinney 1968).

4. 505 F. Supp. 412 (S.D.N.Y. 1980), modified 658 F.2d 875 (2d Cir. 1981).

5. 376 U.S. 398 (1964).

that would violate international law. There was no evidence that the Cuban government had not waived its right to assert the defense merely because it was a plaintiff.

**CORPORATIONS — FORUM NON CONVENIENS — *Panama Processes, S.A. v. Cities Service Co.*, 500 F. Supp. 787 (S.D.N.Y. 1980).**

Plaintiff, Panama Processes, S.A. (Panama), a minority shareholder in the Brazilian corporation of Copebras, brought an action sounding in contract and tort, against defendant, Cities Service Company (Cities), for breach of a majority shareholder's fiduciary duty to a minority shareholder. Cities moved for dismissal on the ground of forum non conveniens.

Panama is a Panamanian corporation with its principal place of business in London. Cities is a Delaware corporation whose principal place of business is in Oklahoma.

Panama, the owner of 30.31% of the stock of Copebras, had obtained an agreement with Copebras that recognized Panama's interest in dividend policy. The agreement stated an intention that Copebras would declare dividends of at least 50% of each year's net income after taxes. In the district court, Panama contended that Cities, between 1965 and 1978, obtained 69.6% ownership of Copebras's stock and, as majority shareholders, it breached its fiduciary duty by employing methods that allowed Copebras's earnings to appear less, thereby diminishing earnings from which dividends could be paid. In support of its motion to dismiss the action on the ground of forum non conveniens, Cities asserted that Brazil was the more appropriate forum since it is Copebras's state of incorporation; accordingly, its law should control. Moreover, as a condition to dismissal, Cities offered to submit to Brazilian jurisdiction. The district court granted defendant's motion.

On appeal, the Second Circuit affirmed the district court's judgment. The court, applying the doctrine of forum non conveniens, stated that unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should not be disturbed. It found that the lower court had carefully examined the relevant factors under the doctrine of forum non conveniens: There was only one witness in New York, and Brazil had a greater interest in deciding the case because the nature of Brazilian corporation law served an economic, political and social function.