

Amazon Beats Claim It Trafficked In Cuban Property

By **Nathan Hale**

Law360 (May 11, 2020, 9:38 PM EDT) -- A Florida federal judge on Monday extinguished a Miami man's suit alleging Amazon and a charcoal producer trafficked in property confiscated by Cuba's communist government in violation of the Helms-Burton Act, concluding the law does not allow claims based on ownership obtained through inheritance after its 1996 passage.

In a four-page order dismissing and closing Daniel Gonzalez's case, U.S. District Judge Robert N. Scola Jr. found that a restriction in Title III of the Helms-Burton Act that a U.S. national may not bring an action over property confiscated before the law's March 12, 1996, passage, "unless such national acquires an ownership of the claim before March 12, 1996," means the citizen filing suit must have already owned the property by that date.

"Gonzalez does not allege that he inherited the property before 1996 (and instead alleges that he inherited it sometime after November 2016), and therefore he fails to state a claim," Judge Scola said. "The plain language of the statute indicates that these allegations are insufficient. The statute states that a United States national may not bring an action 'unless such national' acquires an interest to the property before 1996."

Any other reasoning, the Miami-based judge said, would not only ignore the qualifying word "such" and run afoul of basic canons of statutory construction, but it would also run counter to Congress' intent that this requirement prevent individuals from transferring ownership in confiscated land to a U.S. citizen after the law's enactment to take advantage of the cause of action it created to sue the Cuban government.

Judge Scola had previously dismissed Gonzalez's original complaint over Amazon's and South Florida-based Susshi International Inc.'s dealings in Cuban marabu charcoal allegedly produced on his family's former farmland, after finding that Gonzalez did not sufficiently allege either that he had an actionable ownership interest in the property or that the companies knowingly and intentionally trafficked in the property.

With his findings Monday on Gonzalez's amended ownership claims, the judge said he did not need to address the amended claims on the companies' intent and also said it appeared further amendment would be futile.

In his amended complaint, Gonzalez said that the Cuban government confiscated his

grandfather's farmland in 1959. Ownership passed upon his grandfather's death to Gonzalez's father, Guido Gonzalez, in 1988, shortly after Guido became a U.S. citizen. When Guido Gonzalez died in November 2016, it passed to his wife, but because of her own fragile health, she transferred her ownership claim to their son, the plaintiff.

Daniel Gonzalez was not able to file a claim with the Foreign Claims Settlement Commission under Title V of the International Claims Settlement Act of 1949 because he was not a U.S. citizen at the time the property was confiscated, but Gonzalez became a U.S. citizen prior to March 12, 1996, according to the order.

In his response to the companies' motions to dismiss his amended complaint, Gonzalez argued that a finding that Title III of the 1996 law bars recovery on inherited claims — when many of the alleged property seizures occurred decades before the law was passed — would "reduce the number of potential plaintiffs to almost zero."

He pointed out that the Castro regime confiscated his family's property about 36 years before the act was passed in 1996, at which point many original claimants had already died and passed their ownership rights to their heirs.

"Such an interpretation would render the act toothless," Gonzalez said in his filing. "Without any plaintiffs to enforce Title III, there would be nothing to 'deter' traffickers from 'exploiting [Fidel] Castro's wrongful seizures. The communist Cuban government and its American business partners, like Amazon, would profit with impunity from property stolen from American citizens, without any recourse to the heirs of those victims and the claims they hold."

Monday's ruling could have an impact beyond the immediate case. Gonzalez's suit is part of a wave of litigation launched since last May, when the Trump administration announced it was lifting a suspension on Title III of the Helms-Burton Act that had been in place since the law's enactment, paving the way for U.S. companies and individuals to sue anyone who knowingly profited from property that was seized by the Cuban government before the law's passage.

Counsel for Gonzalez and Amazon did not immediately respond to requests for comment Monday, but counsel for Susshi, which does business as Fogo Charcoal, said the court made the right call.

"We are relieved that the court dismissed the case today after careful application of the law," Susshi's counsel Brandon J. Hechtman of Wicker Smith O'Hara McCoy & Ford PA told Law360.

Gonzalez is represented by Santiago A. Cueto of Cueto Law Group PL.

Amazon is represented by Robert M. Brochin, Matthew M. Papkin and Carl A. Valenstein of Morgan Lewis & Bockius LLP.

Susshi is represented by Brandon J. Hechtman of Wicker Smith O'Hara McCoy & Ford PA.

The case is Gonzalez v. Amazon.com Inc. et al., case number 1:19-cv-23988, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Sarah Martinson and Craig Clough. Editing by Abbie Sarfo.

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