

Las Olas Update

Project Las Olas, Esterillos Oeste, Costa Rica

The Preliminary Evidentiary Hearing

July 7, 2012

On June 19, 2012, the preliminary hearing was held in Quepos, Costa Rica. The purpose of this hearing was fourfold:

1. The Judge will determine if there is enough evidence to refer the criminal matter to trial.
2. To make sure that all the documents that are going to be used at trial were put into evidence at the hearing.
3. Provide the court with the witnesses you intended to call.
4. Based upon the evidence presented at the evidentiary hearing, the Judge and or the Government prosecutors will have an opportunity to dismiss the charges and the case.

I was charged with three crimes, (1) violating the wetlands, (2) an alleged Forge document, (3) not obeying a Government order. Jovan Damjanc was charged with cutting a forest and he had his own attorney representing him. The Judge presiding over this hearing was a new Judge and had not been involved in any previous proceedings. As stated above, the purpose of this hearing was for each side to present whatever evidence they had and would use to prove that we were guilty of the crimes as charged. The Judge would listen to the evidence and then at the end of the hearing he would make a decision about whether he believed that there was enough evidence to refer the matter to trial or if the case should be dismissed. Manuel Ventura was there and was acting as my translator. The hearing lasted all day.

The Government went first and they basically took two hours just reading the accusation they had filed with the court. However, they did not present one piece of evidence that proved we were guilty of the crimes we were charged with.

When our turn came to present our evidence, my attorney decided to let me present the evidence in defense of myself. I had made large exhibits of the relevant documents and would use those to show I was not guilty of any of the crimes I had been charged with. The evidence I presented was the SETENA environmental permit, a number of construction permits and many Government studies conducted by MIANE, SETENA and INTA, all of which stated that there

were no wetlands on the project site. I also presented a number of forestry engineers studies that were conducted on the property which all concluded that project had no forest.

I also pointed out to the Judge the statement made by Dr. Diogenes Cubero Fernandez, the now direct of INTA who conduct the INTA report, which was ordered by Luis Martinez, the criminal prosecutor. That report also clearly said there were no wetlands on the project site. In his report Dr. Cubero said this “ **it’s not up to developer to know what wetlands are, but it was up to the responsible government agencies to make that determination**”. Doesn’t that one simple sentence some all of this up. That determination was made by the responsible government agencies, which was SETENA, who issued the environmental permit, MINAE who conducted a number of reports all saying there were no wetlands, INTA who said there were no wetlands and the municipality of Parrita who issued the construction permits.

This was a preliminary evidentiary hearing was very important, because the judge was given the power an authority to decide if there was enough evidence to refer the matter to trial. Again, the prosecutor and government attorneys presented no evidence during their lengthy presentations, but rather just read from their accusation. On the other hand, we presented compelling evidence showing we had been issued all the legal permits as well as the many Government reports and studies all stating that there were no wetlands.

I took about an hour in presenting my evidence to the Judge and at the end of my presentation the Judge asked me if I would accept questions from the government attorneys. There were two there, one was Luis Martinez, the criminal prosecutor and the other was a civil attorney for the Government. Although I was not required to accept questions, I said sure. So the judge first asked the criminal prosecutor, Mr. Martinez if he had any questions for me and he immediately said no. I want you to understand this very clearly; usually there is nothing that a criminal prosecutor likes better than to get an opportunity to grill the person he has charged with a crime. But when Mr. Martinez was given that opportunity, he could not think of one question to ask me to prove up his case. He didn't even think about it for 1 second, he immediately said no. It’s all on audio tape for anyone to hear. Doesn't that speak loud and clear about his case and his false charges? If the prosecutor cannot ask one relevant question to a person he has charged with a crime, at an important criminal hearing, what’s that tell you about the strength of his case?

The Judge then asked the other government attorney, if he had any questions for me. That attorney at least thought about the question a few seconds and then said, “**maybe can I think about it for a while**”. So the judge takes a recess so the two attorneys’ could put their heads together to try to think of any questions they would want to ask me.

They came back after the recess and the government attorney told the Judge that he would like to ask me one question. The question he had for me was about the alleged forge document. My recollection was the he asked something to the effect why do think this document is not forged. I then said let me show you why, and I got the enlarged exhibit of the letter that Christian

Bogantes wrote in 2010 to another Government agency, which listed all the documents and reports that MINAE had in their files on the Las Olas project. I pointed out that the very first document that was listed by MINAE, as having in their files was the alleged forged document. Did you ever hear of such a thing? The attorney then said no further questions. We are in a criminal hearing to determine if there is enough evidence to refer the case to trial. The Government presents no evidence and then when given an opportunity to ask me whatever questions they want to prove that I am guilty as charged, Mr. Martinez the criminal prosecutor can't think of one questions; and the other attorney can only think of one that really wasn't related to the main part of his case and had no questions about the wetlands of forest and no documents to back up their criminal charges.

At the end of the hearing the judge then asked the prosecutor if he wanted to dismiss any charges. The prosecutor said he wanted to dismiss two charges:

1. The alleged forged document charge, because he said he had no evidence to prove that I had anything to do with that document.
2. Not obeying a government order, which was a SETENA order in which they temporarily rescinded their environmental permit based upon false representations made by MINAE. They said because it was faxed to me instead of being personally served to me. He then dismissed that charge and said this as the reason, **"I can't charge Mr. Aven with a crime that he didn't know about"**.

When Manuel translated that for me, I was again stunned, and here's why. If that was his standard, then not only did I not know about violating wetlands, but every Government document I saw, including the permits and all the Government reports, all stated there were no wetlands. The prosecutor was there and heard and saw all the evidence that was presented. He failed to present any evidence and he failed to ask me one question. He had the opportunity at that hearing to go ahead and dismiss the other charge as well, when he saw there was no evidence to prove me guilty of the crime as charged, but he didn't.

The Judge heard the very same evidence, and he also had an opportunity to dismiss the charges for lack of evidence, but he failed to act as well. What the Judge should have said right after the hearing was something like this: Mr. Martinez, this is an evidentiary hearing and I am supposed to look at and listen to what evidence you have to determine if there is enough evidence to refer this matter to trial. Neither you nor the other Government attorney presented one piece of evidence that would prove the defendants are guilty as charged. Further, when Mr. Aven agreed to accept any questions you may want to ask him, which was a very unusual and unique opportunity that you had, you were unable to think of one question to ask him. On the other hand, Mr. Aven personally presented to this court the various Government issued permits as well as a number of Government studies and reports that were done on the project site all of which stated that there are no wetlands. Therefore, I have to find that there is not enough factual evidence to refer this matter to trial and am therefore dismissing this case.

But this did not happen. Instead the judge wrote an opinion referring the case to trial. We are expecting the trial to take place by the end of this year or the first part of next year. The facts of the case won't change since the facts are facts. Everything we did at Las Olas was done with permits issued by the Government and therefore there was no crime since we were operating under the authority of legally issued Government permits. In the trial there has to be evidence beyond a reasonable doubt that a crime was committed. For a crime to be committed a law would have to be broken and how could a law have been broken when we were operating with Government issued permits?

Again, to restate, we did nothing wrong. Everything we did was by the book and according to permits issued by the Government. What happened represents a complete break down in law and order in Costa Rica at every level, except at SETENA. We have no doubt that we will prevail at trial, but in the meantime, we have been damaged by a shut down notice, the buyers have been damaged, and the community has also been damaged since they are being deprived of jobs and economic growth that comes with community development. We are sick about this as you can imagine. My reputation as well as Jovan's reputation have been damaged in being accused of a crime we didn't commit. It doesn't matter that we are completely innocent, all people hear is that we are criminals.

I will keep you posted when the date of the trial will take place as soon as we know it and keep you posted on any new developments.

David Aven
Owner Representative
Project Las Olas