



INTERNATIONAL HUMAN RIGHTS COMMISSION OF JUDICIAL AND POLICE INQUIRIES (IHRCJPI)

NAFA ATTORNEYS, P.A.: 3200 US Hwy. 27 South, Suite 302, Sebring, Florida 33870
Phone +1-888-282-2241, +1-863-658-1400, e-mail: ayuda@nafalaw.com, www: <http://www.nafalaw.com>



AMERICAN INTERNATIONAL COMMERCIAL ARBITRATION COURT

USA, 1209 N Orange Street, Wilmington, DE 19801-1120
Phone +12024700848 (Washington), +442071939499 (London), e-mail: secretariat@court-inter.us
www: <http://court-inter.us>

August 22, 2018

STATEMENT OF AMICUS CURIAE BRIEF

BY HUMPHREY H. PACHECKER.

Stated Amicus Brief from the Commissioner General of the International Human Rights Commission of Judicial and Police Inquiries of the AICAC COURT (IHRCJPI <http://court-inter.us/>). Dr. HUMPHREY H. PACHECKER files this his Statement in support of of the Summary of the Direct Appeal of Nullity filed by Bolivian Attorney ROMER FERNANDO VILLARROEL HURTADO.

The purpose and mission of this Office at the IHRCJPI, is the promotion of formation and development of the democratic supremacy of law and social justice on international and national levels; promotion of objectivity, validity and justice of decisions of state and municipal bodies; eradication of discrimination in various spheres of social life; ensuring strict observance of civil rights, freedoms and interests; presentation of alternative tools of legal aid and solution of legal problems and conflicts to the society; fighting corruption and unreasonable bureaucracy in state bodies; increasing the general level of social tolerance, morality and culture; progressive all-round development of public relations.

From a tradition in the legal world of accepting informational briefs from certain individuals or entities considered to be friends of the court, came the modern legal practice of submitting amicus briefs for the purpose of providing additional information from a somewhat neutral position.

It is my opinion that in international law, common law and roman law the action of nullity and the responsibility of the State include the organic law and the tribunal of administrative contentious updated, annotated and confirmed with jurisprudence.

NAFA GROUP ATTORNEYS ASSOCIATION
3200 US Hwy. 27 South, Suite 302- Sebring, Florida 33870
Phone: 1-863-658-1400
Email: nafa@nafalaw.com

COURT AICAC INTERNATIONAL ARBITRATION
1317 A 17 SE, Auburn, Washington 98002
Phone: 1-202-470-0848
Email: secretariat@court-inter.us

<http://nafalaw.com>
National Phone: 1-888-282-2241



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According to the lawyer FEDERICO ESCOBAR in his legal essay titled, THE DIRECT REMEDY OF NULLITY: LEGAL NATURE AND SCOPE, and I quote: In order to limit the arbitrary use of public power has been instituted in our legal system the Direct Appeal of Nullity, the same one that finds its support in Art. 122 of the Political Constitution of the State (CPE) that states: "The acts of people who usurp functions that do not concern them, as well as the acts of those who exercise jurisdiction or power, are null. that does not emanate from the law. "Reviewing the history, we find that said constitutional guarantee was introduced in Art. 33 of the Constitution of 1871, with the following text:" The acts of those who usurp functions that do not concern them are null, as well as the acts of those exercising jurisdiction or power that does not emanate from the law "; text that has been preserved through the various constitutional reforms, for example, similar text was found in Article 31 of the 1967 Constitution, which was abrogated by the current CPE. The spirit of said guarantee is to limit the exercise of public power to the attributions that the Constitution assigns to each body or authority; in that order, the Direct Appeal of Nullity is the instrument to safeguard the aforementioned constitutional precept, it is one of the instruments of competence control. Art. 143 and following of the Constitutional Procedural Code develops the provisions contained in Article 122 of the CPE, indicating that the object of the Direct Appeal of Nullity is "to declare the nullity of the acts of organs or public authorities that usurp functions that they do not have jurisdiction, as well as exercising jurisdiction or power that does not emanate from the Law. "; in Article 144 of said Code the act is defined as "any declaration, provision or decision, with general or particular scope, of authority or Public Body, issued in violation of the Political Constitution of the State or the laws."; the cases in which the Direct Appeal of Nullity does not apply are indicated in Article 146 of the Constitutional Procedural Code, which are: 1. Alleged violations of due process. 2. The resolutions issued by the judicial authorities, except when they were issued after having ceased or suspended in the exercise of their functions because of an administrative disciplinary process against them. This last forecast is applicable to the other authorities. The Plurinational Constitutional Court has referred to the legal nature of the Direct Appeal of Nullity indicating that "it is a jurisdictional action of control of legality over the acts or resolutions of public authorities, whose purpose is to expressly declare the nullity of invasive acts or usurpers of the competences defined by the Constitution and the laws; that is to say, it is a restorative jurisdiction ... "(Constitutional Judgments N ° 20/2005 of March 10, 24/2006

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of April 21, 40/2006 of May 23, 50/2006 of June 21, 73 / 2006 of August 29 and 93/2006 of November 28).

According to our common law stare decisis, in the Case of:

Court of Appeal of Louisiana, Fourth Circuit.

GAZEBO, INC., Jean and George Mellen v. CITY OF NEW ORLEANS, et al. Number 97-C-2769.

Decided: March 23, 1998, A final judgment obtained by fraud or ill practices may be annulled.

“The party admit that they knew that Smith intended to intervene. The City and Gazebo dispute the allegations of fraud and ill-practice, claiming that they did not know that the petition-in-intervention had been filed and that they had not been served with a copy of the petition when the consent judgment was entered. Smith claims that the consent judgment granting the live entertainment license should be annulled because the attorneys for the City and Gazebo acted with fraud or ill practices when they presented the consent judgment to the duty judge for signature, but did not tell him about the petition-in-intervention, despite the fact they both were aware of the petition.

Therefore, the Court find that the petition for nullity was properly filed within the original action in the instant case. Rather, such is in the interest of judicial economy.

The Court see no prohibition or adverse effects to allowing the filing of a petition for nullity asserting fraud and ill practices in the same proceedings as the offending judgment. Clearly, any of those methods would be a collateral attack that is an attempt to impeach the decree in a proceeding not instituted for the express purpose of annulling the judgment. We, too, believe the prohibition is against the issue being raised by way of affirmative defense such as in the answer or by exception.

Id. at 694.

Thus, the fact that the party raised the issue of nullity in the same proceeding as that which resulted in the offending judgment does not pose a problem in the instant case.

Such a procedure is considered the most direct and efficient method of attacking an allegedly relatively null judgment, as well as the most judicially expeditious. Thus, a majority of the members of this court

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have now expressed a view consistent with that adopted in the Roach case, indicating that a party should be allowed to assert an action for nullity based on fraud or ill practices by filing a petition in the same case which produced the offending judgment.

Accordingly, the trial court judgment dismissing the motion to vacate on an exception of improper use of summary proceedings is affirmed. The asserting of an alleged nullity through the filing of a motion has never been sanctioned either by this court or by the Louisiana Third Circuit Court of Appeal's opinion in Roach. On the other hand, as the trial court held, the fact that Smith raised the alleged nullity by filing a motion for nullity, rather than a petition for nullity, is a problem.

Conclusion: The case is remanded for disposition of the motion for new trial and for further proceedings consistent with this decision. The trial court judgment dismissing Smith's motion for nullity on an exception of improper use of summary proceedings is affirmed.”

WHEREFORE, based on the above and foregoing arguments and authorities cited herein, in the “Resumen del Recurso de Nulidad”, by attorney ROMER FERNANDO VILLARROEL HURTADO, before the jurisdiction of TPC, the International Human Rights Commission of Judicial and Police Inquiries of the AICAC COURT (IHRCJPI), respectfully submits this Statement Amicus Curiae, that the decision on the Summary of the Direct Appeal of Nullity should be granted.

Respectfully submitted.

HUMPHREY H. PACHECKER

Commissioner General of the International Human Rights Commission of Judicial and Police Inquiries of the AICAC COURT (IHRCJPI)

NAFA LAW

3200 US HWY. 27 South, Suite 302

Sebring, Florida 33870

(863) 658-1400

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